

Effective 8/29/03



**VERMONT DEPARTMENT OF EDUCATION
SPECIAL EDUCATION REGULATIONS
AND
OTHER PERTINENT REGULATIONS**

**FROM THE VERMONT STATE BOARD OF EDUCATION
MANUAL OF RULES AND PRACTICES**

Revised and Effective 8/29/03
Replacing the 8/16/01 Regulations

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**SPECIAL EDUCATION RULES APPEARING IN
THE VERMONT STATE BOARD OF EDUCATION
MANUAL OF RULES AND PRACTICES**

Statutory/Regulatory Authority:

Statutory authority for these rules derives from the following, all as amended from time to time:

16 V.S.A. Chapters 23, 25, 27, 51, 101, and 133;
PL 105-17 Individuals with Disabilities Education Act Amendments of 1997 (IDEA);
Section 504 of the Rehabilitation Act of 1973; and
PL 103-382 Title I of the Improving America's Schools Act (IASA).

2360 Special Education

2360.1 Statement of Purpose

These rules are designed to ensure that eligible Vermont students with disabilities receive a free appropriate public education in accordance with state and federal laws and regulations and in a cost-effective manner.

2360.2 Free Appropriate Public Education (FAPE)

These rules implement the IDEA, which provides for the education of children, youth and young adults as follows.

(a) FAPE for children beginning at age 3

An eligible child shall be entitled to a free appropriate public education beginning no later than the child's third birthday and continuing, unless otherwise provided herein, through 21 years of age. An individualized education program (IEP), rather than an individualized family service plan (IFSP), shall be in effect for an eligible child by his or her third birthday. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

(b) FAPE for students who have graduated

- (1) A student who has graduated from high school with a regular high school diploma shall not be entitled to a FAPE. A student who has not yet graduated and whose entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a), may be allowed to complete the

remaining academic year with IEP team approval and approval from the Department of Education

(c) FAPE for students who have dropped out of school

If a student drops out of school, that student may return at any time and request to be provided with a FAPE until the student graduates with a high school diploma or the student's entitlement to a FAPE ends because the upper age limit of eligibility is reached as described in Rule 2360.2(a).

(d) FAPE for children who had been receiving IEP services and are removed from their IEP placement for disciplinary reasons.

(1) A school district is not required to provide services to a student on an IEP, if services are not provided to students without disabilities who have similarly been removed, and if the removal is for ten school days or less in the same school year and does not constitute a change of placement. A change of placement for these purposes is defined as:

- (i) A removal that is more than ten consecutive school days; or
- (ii) A series of removals that constitutes a pattern because the removals cumulate to more than ten school days in a school year and because of factors such as:
 - (A) Length of each removal;
 - (B) Total amount of time the student is removed;
 - (C) The proximity of the removals to one another; and
 - (D) The reasons for the removals.

(2) In the case of a child eligible for special education who has been removed from his or her current placement for more than ten cumulative school days in the same school year, the school district, for any school days of removal exceeding ten, shall:

- (i) Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removal is:

- (A) Under a school administrator's authority to remove the child for not more than ten consecutive school days as long as that removal does not constitute a change of placement pursuant to Rule 2360.2(d) and Rule 4313.2 ; or
- (B) For behavior that is not a manifestation of the child's disability pursuant to §4313.5.
- (ii) Provide services pursuant to rule 4313.9 if the student is removed to an interim alternative educational setting (IAES) for drug or weapons offenses, or if a student is removed based upon a hearing officer's determination pursuant to rule 4313.8 that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.
- (3) (i) The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability, pursuant to §4313.4.
- (ii) School personnel, in consultation with the child's special education teacher, determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and to appropriately advance toward achieving IEP goals, if the removal is pursuant to Rule 4313.1.
- (e) FAPE for children advancing from grade to grade

Each school district shall provide a FAPE to any individual child with a disability, who is eligible for special education, even though the child is advancing from grade to grade.

- (f) FAPE for youth who are incarcerated in adult correctional facilities:

- (1) For a person between the ages of 18 through age 21:

- (i) If a person in his or her last educational placement before incarceration had not been identified as a child with a disability who was eligible for special education and did not have an IEP in place, the Department of Corrections will not be mandated to provide a FAPE.

- (A) The Department of Corrections shall make reasonable efforts to obtain and review whatever information is needed to determine that the

incarcerated individual has not been identified as a child eligible for special education and did not have an IEP in his or her last educational placement prior to incarceration in an adult correctional facility.

(ii) A person who is incarcerated shall be entitled to a FAPE if:

(A) The person was provided services through an IEP before incarceration;

(B) The person had been provided services through an IEP, had left school, then was incarcerated; or

(C) The person had not been provided services through an IEP, but had been identified as a child with a disability who was eligible for special education under 34 CFR §300.7.

(iii) The following requirements do not apply to incarcerated students aged 18 through 21:

(A) The requirement to participate in district-wide assessment programs and

(B) The IEP requirements for transition planning and transition services, if the inmate will reach the upper age limit for a FAPE before release from prison based on consideration of sentence and eligibility for early release.

(iv) Modifications of IEP or placement.

(A) The IEP team may modify the student's IEP or placement, if the Department of Corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(B) The LRE requirements of §2364 do not apply to incarcerated students on IEPs.

(2) For incarcerated persons under the age of 18, the Department of Corrections shall ensure that at intake, a screening occurs to identify those who have a disability or who are suspected of having a disability and who are in need of special education. Those who are in need of special education shall be provided with an individualized educational program (IEP) and re-evaluations as prescribed under §2362 - 2363.10 of these rules.

(g) Non-academic services.

Non-academic services shall be considered for students receiving special education.

(1) Each school district shall take steps to provide non-academic and extra-curricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(2) In providing or arranging for the provision of non-academic (examples: meals and recess periods) and extra-curricular services and activities, the school district shall insure that an eligible student participates with non-disabled students in those services and activities to the maximum extent appropriate to the needs of that student.

DEFINITIONS

2360.3 Definitions

Accommodations. Accommodations means those evaluation procedures, curricula, materials or programmatic adaptations, behavior management interventions, and supplemental aids and services that are necessary for an eligible student to benefit from his or her regular education or to participate in non-academic or extra-curricular activities.

Adaptive behavior. Adaptive behavior skills are the skills essential to independent functioning, personal responsibility, and social responsibility.

Basic skills. Basic skills are those skills enumerated in Rule 2362(f).

Change in placement. The meaning of the term “change in placement” is found in Rule 4313.2.

Consent. Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)

- (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Current placement. The current placement shall be the placement that was in the last implemented IEP.

Day. Whenever a limit of "days" appears within these regulations, the following definitions shall apply:

- (a) "Day" is defined as a calendar day, unless stated to be "business day" or "school day".
- (b) "Business day" means weekdays, excluding Federal and State holidays, unless the latter are specifically included.
- (c) "School day" means any day, including partial days, when children attend school for instructional purposes. The term school day has the same meaning for all children in school, including children with and without disabilities.

Eligibility. See Rule 2360.5.3 for children from birth through 2 years 11 months of age. See Rule 2361 for children ages 3 up to the sixth birthday. See Rule 2362 for children and students ages 6 through 21.

Evaluation. Evaluation means procedures used in accordance with Rule 2362.

Evaluation and Planning Team (EPT). See Rule 2362.2.2.

Free appropriate public education (FAPE). A FAPE means special education and related services that—

- (a) Are provided at public expense, under public supervision and direction, and without charge to the parent or student;
- (b) Meet the standards of the State, including the requirements of Part B of the IDEA ; include preschool, elementary school, or secondary school education; and
- (c) Are provided in conformity with an IEP that meets the requirements of Rules 2363 – 2363.8.

IEP Team. See Rules 2363.1 and 2363.4.

Individualized education program (IEP). An IEP is a written document that is developed for a child who has been found eligible for special education services.

Manifestation determination. "Manifestation determination" for purposes of these rules shall be as defined in Rule 4313.4.

Meeting. A meeting is a session held for the development or review of a child's evaluation plan, determination of eligibility and IEP. A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities in which school personnel might engage to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Parent. Whenever the words "parent" or "parents" appear in these rules, the words shall mean, as appropriate:

- (a) A biological or adoptive parent;
- (b) A legal guardian, but not the state if the student is in the custody of the Commissioner of Social and Rehabilitative Services;
- (c) A person who is acting as a parent, such as a grandparent or stepparent with whom the child lives and who is legally responsible for the child;
- (d) A foster parent who has been appointed the educational surrogate parent by the Vermont Educational Surrogate Parent Program; or
- (e) Educational surrogate parent.

Physician. Physician is a person who is licensed to practice medicine or surgery, as defined in 26 V.S.A. §1311

Regular education environment. A regular education environment includes all school and non-school environments used for similar purposes by students with and without disabilities (i.e., regular classroom, school library, learning centers and community job sites).

School district. A school district shall be as defined in 16 V.S.A. section 11(a)(10). Where the context allows, the term “school district” may also include the public agency or supervisory union that is responsible for providing special education and related services.

Supplementary aids and services. Supplementary aids and services are aids, services and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

2360.3.1 Special Education Services

The term "special education" means specially designed instruction that cannot be provided within the school's standard instructional conditions or provided through the school's educational support system, at no cost to the parent, to meet the unique needs of an eligible child with a disability. It means adapting, as appropriate, to the needs of an eligible child, the content, methodology, or delivery of instruction:

- (a) To address the unique needs of the child that result from the child's disability; and
- (b) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the school district that apply to all children.

1) Special education services include, as appropriate:

- (i) Classroom instruction, home instruction, instruction in hospitals and institutions and instruction in other settings;
- (ii) Instruction in physical education which is the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education, and motor development;
- (iii) Speech–language pathology services;
- (iv) Travel training which is the provision of instruction, as appropriate, to children with significant cognitive disabilities and any other children with disabilities who require this instruction, to enable them to:
 - (A) Develop an awareness of the environment in which they live; and

- (B) Learn the skills necessary to move effectively and safely from place to place within that environment such as school, home, work and in the community.
- (v) Technical education which means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
- (c) Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.
 - (1) "Transition services" means a coordinated set of activities for a student with a disability that:
 - (i) Are designed within a process, that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (ii) Is based on the individual student's needs, taking into account the student's preferences and interests; and includes:
 - (A) Instruction;
 - (B) Related services;
 - (C) Community experiences;
 - (D) The development of employment and other adult living objectives; and
 - (E) If appropriate, acquisition of daily living skills and functional vocational evaluation.

2360.3.2 Related Services

The term "related services" means transportation and such developmental, corrective, and other supportive services required to assist a child who requires special education services to benefit from his or her special education program. A child will not be designated as a child who is eligible for special education, if the child needs only a related service, but not special education services. Related services shall include, but are not limited to:

- (a) Audiology services;
- (b) Speech-language pathology services;
- (c) Psychological services;
- (d) Physical and occupational therapy provided by qualified therapists;
- (e) Recreation which includes:
 - (1) Assessment of leisure function;
 - (2) Therapeutic recreation services;
 - (3) Recreation programs in schools and community agencies; and
 - (4) Leisure education.
- (f) Counseling services provided by qualified social workers, psychologists, guidance counselors or other qualified personnel;
- (g) Orientation and mobility services which include:
 - (1) Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (2) Teaching students the following, as appropriate:
 - (i) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

- (ii) Use of the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; and
 - (iii) Understanding and use of residual vision and distance low vision aids; and
 - (iv) Other concepts, techniques, and tools.
- (h) Diagnostic and evaluative medical services by a licensed physician to the extent necessary to assist in the determination of a child's medically related disability;
- (i) School health services;
- (j) Social work services in schools which include:
 - (1) Preparing a social or developmental history on a child with a disability;
 - (2) Group and individual counseling with the child and family;
 - (3) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
 - (4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
 - (5) Assisting in developing positive behavioral interventions and strategies.
- (k) Parent counseling and training which includes:
 - (1) Assisting parents in understanding the special needs of their child;
 - (2) Providing parents with information about child development; and
 - (3) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (l) Rehabilitation counseling services which are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community. It includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(m) Transportation which includes:

- (1) Travel to and from school and between schools;
- (2) Travel in and around school buildings; and
- (3) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

2360.3.3 Assistive Technology

“Assistive technology” may be special education services, related services, or supplementary aids and services, depending on the needs of a child who is eligible for special education. Assistive technology is a device or services or both, as defined below:

(a) Assistive technology may be a device or service which can be used to support the child in receiving his/her special education program.

(1) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.

(i) The term assistive technology service includes:

- (A) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
- (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for children with disabilities;
- (C) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

- (E) Training or technical assistance for a child with a disability or, if appropriate, that child's family. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a FAPE; and
- (F) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

2360.3.4 Comprehensive Child-Find and Child-Count System

(a) Child-find procedures and activities shall be as follows:

- (1) The Vermont Department of Education and the Agency of Human Services are co-lead agencies for the Family, Infant and Toddler Project and assume joint responsibility for overseeing child-find and child-count. For these purposes the State is divided into twelve regions. Each region has a regional team comprised of school districts and representatives from other agencies. Child-find for infants birth to 2 years, 11 months is a joint responsibility of the school district and other local public agencies as detailed in Regional Plans for the implementation of Early Intervention Services. However, consistent with IDEA-Part B, school districts maintain the ultimate responsibility for assuring child-find responsibilities.
- (2) Child-find for children and youth, ages three through 21, shall be the responsibility of each school district.
- (3) Each regional team and school district shall ensure that public notification is given before conducting any significant activity that is designed to identify, locate or evaluate children with disabilities who are birth through 21. The Vermont Department of Education shall provide a public notice in major newspapers to inform parents that the information gathered shall be treated confidentially.
- (4) The Department's notice shall be available in the native languages of the various major population groups in Vermont. The notice shall indicate that information obtained during "child-find" shall remain confidential as required in sections 2365.2 – 2365.12 of these rules. The Department's notice shall contain the following information:
 - (i) A description of the children about whom personally identifiable information is maintained, the types of information sought, the methods the State intends to

- use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- (ii) A summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (iii) A description of the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR, Part 99.
- (5) Each school district shall annually inform the public regarding the availability of special education services for children with disabilities who are three through twenty-one years of age, including:
- (i) Children who are not enrolled in school ;
 - (ii) Children who turn 3 years of age at any time after the school year begins and prior to the beginning of the next school year;
 - (iii) Children attending private/independent schools or who are enrolled in home study programs;
 - (iv) Children who are suspected of having a disability even though they are advancing from grade to grade; and
 - (v) Children who are highly mobile such as migrant and homeless children.
- (6) Activities
- (i) Each regional team and school district shall identify, locate and evaluate all infants and toddlers, children or young adults with disabilities, birth through 21, residing within the jurisdiction of the responsible agency who are in need of early intervention or special education services.
 - (ii) Child-find activities may include the posting of notices in newspapers, fliers in various locations such as physicians' offices and health centers, radio or television announcements.
- (b) Reporting of Child-Count or the Number of Eligible Children and Students Being Served
- (1) Each school district shall annually submit to the Department of Education in an electronic format specified by the Department, data requested by the

Department on students who have been found eligible for special education under the IDEA.

- (2) The Director of the Family, Infant and Toddler Project (FITP) shall forward the child-count of children being served who are birth through 2 years, 11 months of age to the Vermont Department of Education.

2360.3.5 Personnel Standards

(a) Para-educators

- (1) The term "para-educator" includes paraprofessionals, teacher assistants, instructional assistants and others who assist qualified professionals in the provision of special education and related services. Para-educators serve in a position for which a teacher or other professional staff has the ultimate responsibility for the design, implementation and evaluation of instructional and behavioral programs and student progress.

(2) Each school district and supervisory union shall:

- (i) Identify the training needs of the para-educators who assist qualified personnel in the provision of special education and related services.
- (ii) Provide para-educators entry level training as needed and ongoing inservice training to ensure that para-educators are appropriately trained.
- (iii) Provide ongoing supervision for para-educators by qualified personnel. "Qualified personnel" means personnel who have met the Vermont State Board of Education licensing requirements that apply to the area in which the individuals are providing special education and related services.
- (iv) Develop and implement procedures for performance evaluations of para-educators by appropriate professional staff.

(b) Policy on shortage of personnel

Each supervisory union and school district shall make an ongoing good faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities. In a geographic area of the State where there is a shortage of personnel who meet these qualifications, the most qualified individuals available who are making satisfactory progress toward completing course work necessary to meet the standards described in this section within three years, may be hired in accordance with Vermont educator licensing requirements.

2360.3.6 Required Forms

The Commissioner shall develop, make available, and publish a list of required and suggested special education forms. Responsible agencies shall use the special education forms, which the Commissioner designates for required use. The forms provided by the Commissioner shall not require more paperwork than is required by federal law and regulation.

2360.3.7 Use of Insurance

- (a) Nothing in these regulations or the regulations implementing the Individuals with Disabilities Education Act is intended to relieve an insurer, Medicaid or other third party, from an otherwise valid obligation to provide or pay for services to a student who is eligible for special education. A school district shall use funds from the State Medicaid reimbursement administrative special fund in accordance with 16 V.S.A. § 2959a (e).

- (1) Children who are covered by public insurance.

A school district cannot require a parent to engage in the Medicaid process, if:

- (i) Receipt of special education services is contingent upon the parent agreeing to be involved in the Medicaid process;
- (ii) Use of public insurance would result in the parent incurring an out-of-pocket expense such as the payment of a deductible or co-pay amount;
- (iii) Use of public insurance would decrease available lifetime coverage or any other insured benefit;
- (iv) Use of public insurance would result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;
- (v) Use of public insurance would increase premiums or lead to the discontinuation of insurance; or
- (vi) Use of public insurance would risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

- (2) Children who are covered by private insurance.

- (i) With regard to services required to provide a FAPE to an eligible student, a school district may access a parent's private insurance only if the parent provides informed consent. Consent must be in writing after the parent has been informed in their native language or other mode of communication that they are consenting to the use of private insurance and that if this use results in a cost incurred such as their life-time cap on coverage, they are aware of it.
 - (ii) Each time the school district proposes to access the parent's private insurance, it must obtain parental consent and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.
- (b) If a school district is unable to obtain parental consent to use the parent's private or public insurance, because the parent would incur a cost for a co-payment or deductible, the school district may use its IDEA-B funds to pay for the co-payment or deductible.
- (c) Proceeds from public or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a school district spends reimbursements from Federal funds (e.g., Medicaid) for services under the IDEA, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions under the IDEA.
- (d) Nothing in these regulations should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public insurance program by Federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, or any other public insurance program.

2360.5 Early Intervention Services For Infants And Toddlers, Birth to Three Years Of Age: Part C Of the Individuals with Disabilities Education Act

Part C, provides early intervention services for children birth to the third birthday. While Part B of the IDEA provides a FAPE to eligible people from their third birthday through 21 years of age, Part C does not provide a FAPE to its eligible population. The Vermont Department of Education and the Agency of Human Services shall serve as the co-lead agencies in Vermont for the implementation of early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA).

As required by federal law, school districts shall engage in child-find activities to identify children who may require early intervention services.

Information and outreach services such as screening, information and referral, and family support and education shall be available for any family with concerns about their infant or toddler's development.

2360.5.1 Role of Schools/Referral/Core Team

- (a) By way of Vermont's Interagency Agreement for the Provision of Early Intervention Services, the role that each school district/supervisory union has in the provision of early intervention services shall be detailed in Regional Plans for Early Intervention. School districts/supervisory unions shall be primary referral sources and participating partners in the provision of early intervention services under Part C – IDEA.
- (b) Each region shall designate a “host agency” that serves as the central point of referral for the Family, Infant and Toddler Project. School districts/supervisory unions receiving referrals for children under the age of three, with parent approval, shall forward the referral to the regional host agency.
- (c) School districts/supervisory unions shall be members on the core team comprised of the family, regional early interventionist, school representative, community resource parent, and Children with Special Health Needs (CSHN) medical social worker for children with medical concerns. The core team shall:
 - (1) Determine who will make the initial visit with a family;
 - (2) Determine who will provide interim service coordination;
 - (3) Develop a multidisciplinary evaluation plan based on the family's concerns; and,
 - (4) Determine eligibility for early intervention services.

2360.5.2 Evaluation

- (a) Informed parental written consent shall be required prior to initiating the evaluation process.
- (b) A multidisciplinary evaluation shall be completed which includes:
 - (1) Observation/report/clinical judgments by the core team;
 - (2) Non-discriminatory and appropriate screening and assessment instruments which may include criterion referenced or norm referenced instruments or screening/development profiles;
 - (3) A review of pertinent medical records and current health status;
 - (4) Documentation of a diagnosis or established condition which has a high probability of resulting in developmental delays, when eligibility will be based on a high probability of a developmental delay;
 - (5) An evaluation of the child's:
 - (i) Cognitive development,
 - (ii) Physical development, including vision and hearing,
 - (iii) Communication development,
 - (iv) Social or emotional development, and
 - (v) Adaptive development.
- (c) The initial evaluation must be completed and a meeting held to develop the initial Individualized Family Service Plan (IFSP) for an eligible child within 45 days of the host agency receiving the referral.
 - (1) If, due to exceptional circumstances, it is not possible to complete the evaluation and assessment and hold the initial IFSP meeting within the forty-five day requirement, the core team must:
 - (i) Document attempts to comply.
 - (ii) Document the exceptional circumstances preventing compliance.

- (iii) Develop jointly with parents, strategies and timelines to complete the evaluation.
- (2) If early intervention services are determined to be needed immediately before the completion of the evaluation, the core team may develop an interim IFSP which includes:
 - (i) The name of the service coordinator who shall be responsible for the implementation of the interim IFSP and coordination with other agencies and persons and
 - (ii) The early intervention services that have been determined to be needed immediately by the child and the child's family.

2360.5.3 Eligibility

- (a) Families with children from birth through the third birthday, who have a developmental delay or a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay, are eligible for early intervention services. Eligibility for services shall be based on the following criteria:

(1) Developmental Delay

A developmental delay is a clearly observable and measurable delay in one or more of the following areas: cognitive development, physical development (including hearing and vision), communication development, social-emotional development, or adaptive development, and the delayed development shall be at the level that the child's future success in home, school, or community cannot be assured without the provision of early intervention services.

(2) High probability for developmental delay

- (i) A diagnosed physical or mental condition which has a high probability of resulting in a developmental delay. The delay in development may or may not be exhibited at the time of diagnosis.
- (ii) Such a condition may include, but is not limited to:
 - (A) Chromosomal Anomalies/Genetic Disorders. This category can include Down Syndrome, other chromosomal anomalies with known developmental consequences, and genetic disorders such as cystic fibrosis;

- (B) Inborn errors of metabolism including infant phenylketonuria (PKU) and hypothyroidism;
- (C) Severe Infectious Diseases including prenatally acquired infections such as HIV, or postnatal infections such as meningitis or encephalitis;
- (D) Neurological Disorders including neuromuscular disorders, cerebral palsy, seizure disorders and degenerative central nervous system disorders such as Tay Sachs and tuberous sclerosis;
- (E) Congenital Malformations including birth defects of the respiratory or central nervous system (e.g., cleft palate, spina bifida) or conditions such as microencephaly or hydrocephalus;
- (F) Sensory Disorders including severe hearing loss or deafness and visual loss or blindness;
- (G) Severe Attachment and other Atypical Disorders, and Socio-Affective Disorders of Infancy including reactive attachment disorder, autism and pervasive developmental disorder;
- (H) Severe Toxic Exposure including prenatal toxic exposure to drugs, postnatal lead poisoning (blood lead levels of 20 g/dl or greater), fetal alcohol syndrome;
- (I) Medically Fragile including technology-dependent children with complex health care needs;
- (J) Chronic Medical Illness including cancer, diabetes, heart problems, and renal failure;
- (K) Severe Complications at Birth - Requires at least 2 of the following conditions to be present:

Birthweight - less than 1500 grams;
Apgar scores at 5 minutes - less than 6;
Intraventricular Hemorrhage (IVH) - Grade III or IV;
Intrauterine Growth Retardation (IUGR) - Symmetrical;
Respiratory Distress Syndrome - RDS;
Gestational Age - less than 32 weeks;
Asphyxiation; and/or
Periventricular Leukomalacia.

(b) Environmentally at Risk

Early intervention funds may be used to identify and evaluate environmentally at-risk infants and toddlers and to make referrals to other appropriate services. Periodic follow-up may be provided, within the limits of funds available, for infants and toddlers who are at-risk for developmental delays but who are determined to be not eligible for early intervention services to determine if the child's status may have changed with respect to eligibility for early intervention services.

(c) Eligibility Determination

- (1) The core team shall determine a child's eligibility for early intervention services.
- (2) The child's record or IFSP shall clearly reflect the methods or evaluations used to determine eligibility, the eligibility decision, and the participation of the core team in the determination.

(d) Transfer of a Child from Another Region in Vermont

A child determined eligible in one region continues to be eligible in any other region without need for another evaluation or determination of eligibility.

(e) Transfer from Another State

For a child who has previously been found eligible for early intervention services in another state, the Core Team shall review eligibility information from that state to determine if he/she is eligible under Vermont's eligibility definition. If any additional evaluations are needed, parental consent shall be obtained.

2360.5.4 IFSP Meetings and Reviews

(a) IFSP meetings shall be:

- (1) Held at least annually;
- (2) Held in settings and at times that are accessible and convenient for families;
- (3) Held in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so;
- (4) Arranged with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend;
- (5) Attended at minimum by:
 - (i) The parent(s) of the child, and
 - (ii) The service coordinator.
- (6) Also attended by or otherwise include the participation of:
 - (i) Other family members, as requested by the family;

- (ii) An advocate or person outside the family as requested by the family;
- (iii) The person(s) directly involved in the evaluation and assessment process; and
- (iv) As appropriate, the person(s) who will be providing services to the child and/or the family.

(7) Participation may include:

- (i) Sharing information through a telephone call and making pertinent records available; and
- (ii) Having a knowledgeable authorized representative attend the meeting.

(b) A periodic review of the IFSP for a child and the child's family shall occur at least every six months, or more frequently if needed, or requested by the family. The review need not take place at a formal meeting but may occur through other means that are acceptable to the parents and other participants. The purpose of the review is to determine:

- (1) Progress made toward achieving the outcomes identified in the IFSP, and
- (2) Whether modification or revision of the outcomes or services is needed.

2360.5.5 Contents of the IFSP

(a) The contents of the IFSP shall be fully explained to parents and shall include the following:

- (1) A statement of the child's present level of development in the areas of physical (including vision, hearing and health status), cognitive, communication, social-emotional, and adaptive development. Present levels of development are based on professionally accepted objective criteria. This information shall be presented in easily understood language.
- (2) With the concurrence of the family, a statement of the family's priorities and concerns related to enhancing the development of the child;
- (3) A statement of the major family driven outcomes that are expected for the child and the family;

- (4) The criteria, procedures and timelines used to determine the degree to which progress toward achieving the outcomes is being made;
- (5) A statement of specific early intervention services necessary to meet the unique needs of the child and family to achieve the identified outcomes, including:
 - (i) The frequency, intensity, and method of delivering the services. Frequency and intensity and method means the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the session is provided on an individual or group basis.
 - (ii) The natural environments in which early intervention services shall be provided, including a justification of the extent, if any, to which the services will not be provided in the child's natural environment. Services shall be provided in a setting other than the child's natural environment only if early intervention cannot be achieved satisfactorily for the child in a natural environment. Natural environments, including the home and community, are settings that are natural or normal for the child's age peers who have no disability.
 - (iii) The location of services; and
 - (iv) Sources of payment for such services.
- (6) As appropriate, a statement of medical and other services or supports which a child or family needs, but that are not early intervention services. The IFSP shall include funding sources that may be used to pay for these services, and if necessary, the steps that will be taken to explore and secure these services and supports.
- (7) The projected dates for beginning the early intervention services as soon as possible after the IFSP meeting, and the anticipated duration of services.
- (8) The name of the service coordinator who will be responsible for implementing the service plan and coordinating the process among other agencies and/or persons.

2360.5.6 Consent for Early Intervention Services: Termination of Services

- (a) Informed written consent by parents is needed before early intervention services may be provided.

(b) Early intervention services may be terminated when the:

- (1) Parent requests that all services or any service be terminated;
- (2) IFSP team determines that there is no longer a need for all services or any service;
- (3) Child is no longer a Vermont resident.

2360.5.7 Transition at Age Three

(a) Parents of children who are in transition to Essential Early Education (EEE) or other preschool services shall be included in all phases of the transition planning and process including participation in transition meetings, site visits, and the development of the transition plan.

(b) Eligibility for EEE Services

- (1) A child who received special instruction, developmental therapy services or speech services through an IFSP shall be eligible for EEE without need for additional evaluation.
- (2) A child who did not receive special instruction, developmental therapy or speech services through an IFSP, may be eligible for EEE services if the Evaluation and Planning Team determines that the child has a medical condition which may result in significant delays by the time of the child's sixth birthday.

(c) Notification of Transition Meeting(s)

- (1) The IFSP service coordinator shall provide written notification to the supervisory union or local school district where the child resides at least six months prior to the child's third birthday. With the permission of the family, the IFSP service coordinator shall convene a meeting or series of meetings that include:
 - (i) The family;
 - (ii) School district personnel;
 - (iii) A representative from the Family, Infant, and Toddler Project;
 - (iv) Other IFSP team members or service providers; and

- (v) Others who are likely to be involved in service delivery after the child turns three.

- (2) The purpose of such meetings is to begin transition planning at least 90 days and up to six months prior to the child's third birthday. A Children with Special Health Needs (CSHN) social worker shall participate in transition planning for children with medical needs enrolled in CSHN programs. Transition meetings may serve as IEP planning and development meetings for children who will transition to EEE services. Families shall be provided information about parental rights and responsibilities, i.e., procedural safeguards, regarding the transition process and EEE.

(d) Transition Plan for Children in Transition to EEE Services

- (1) Transition meetings shall result in the development of a comprehensive transition plan that details the necessary steps to enable the child to receive EEE services and/or other preschool services as of the child's third birthday.
- (2) The IEP shall be completed no later than the child's third birthday. When a child turns three shortly before the end of the school year or in the summer, the transition team shall meet to develop the IEP prior to the end of the school year or by the child's third birthday. The child's IEP Planning Team shall include all required components of an IEP which are listed in rule 2363.8.

(e) Records Sent To The EEE Program

With the parent's consent, copies of the following IFSP records shall be sent to the EEE program for the child's district of residence:

- (1) Evaluations and information used to determine eligibility;
- (2) IFSPs;
- (3) Pertinent contact notes; and
- (4) A signed consent from the parent to release information to the program.

(f) Consent to EEE Placement

For children who transition to EEE services, the parent shall be asked to consent to EEE placement for the period of time between age 3 and the date the initial evaluation under Part B is due. Initial consent for evaluation and placement under Part B shall

occur when the initial evaluation for early intervention expires after 3 years or sooner if requested by the parent or responsible agency.

(g) Records

(1) Family, Infant and Toddler Project early intervention records shall be the property of the co-lead agencies, the Vermont Department of Education and Agency of Human Services. The child's record at the host agency shall be the central record for children referred for early intervention services. Records at the host agency shall contain the following:

- (i) Record of Access;
- (ii) Consents for Release of Information;
- (iii) Consent for Evaluation;
- (iv) Documentation that parental rights have been given in writing and explained verbally;
- (v) Evaluation reports or summaries used to determine eligibility;
- (vi) Eligibility form;
- (vii) Written notice of IFSP meetings;
- (viii) The most recent and previous IFSPs;
- (ix) Information related to IFSP reviews; and
- (x) Information related to transition planning

(2) Additional components of the child's record may be maintained by service providers as indicated on the IFSP.

2360.5.8 Procedural Safeguards.

If a parent disagrees with the decisions made by the core team in subsection (c) of Rule 2360.5.1 the parent may pursue informal dispute resolution options or may utilize the appeal process set forth in Rule 2365.

Effective 8/29/03

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**ELIGIBILITY FOR SPECIAL EDUCATION, AGES THREE THROUGH TWENTY ONE
Pursuant to the Individuals with Disabilities Education Act Part B**

**2361 Eligibility of Children Age Three Years Up To the Sixth Birthday for
Essential Early Education (EEE)**

- (a) A child shall be eligible for EEE if:
- (1) Determined to be eligible under Rule 2360.5.7(b)(1);
 - (2) After evaluation by an evaluation and planning team (EPT), the EPT finds that the child has a disability caused by a developmental delay or has a medical condition which may result in significant delays, and the child needs special education; or
 - (3) The child meets the eligibility criteria for children 6 through 21 under Rule 2362.
- (b) For the purposes of this section, “medical condition” means a condition diagnosed by a licensed physician such as cerebral palsy, Down Syndrome, attention deficit disorder with hyperactivity that may result in significant delays by the child's sixth birthday.
- (c) For the purposes of this section, “developmental delay” is determined through an evaluation which consists of two assessments, one of which is a norm referenced assessment, where the child demonstrates at least a 40% delay in one or more of the following fundamental skills:
- (i) Receptive and/or expressive communication skills;
 - (ii) Adaptive behavior skills such as self care and personal social skills;
 - (iii) Gross or fine motor skills; or
 - (iv) Cognitive skills such as perception, memory, processing and reasoning.
- (d) The administration of any assessments shall be in compliance with the evaluation requirements of Rule 2362.2.1.
- (e) The percentage delay in a child's performance on a norm referenced assessment may be measured by dividing the child's age equivalent score in months by the child's actual age in months, and then multiplying the quotient by 100. The result is then subtracted from 100 to determine the child's percentage of delay.

2361.1 Transition for Children Moving into Kindergarten

In order to ensure a smooth transition to kindergarten, the IEP team shall:

- (a) Meet three to six months prior to the child's entrance into kindergarten.
- (b) Include in the meeting a kindergarten teacher and a special education teacher or service provider from the elementary school.

2361.2 Educational Placement in the Least Restrictive Environment (LRE)

In determining the educational placement of a preschool child with a disability, each school district shall ensure that:

- (a) The placement decision shall be made by the IEP team in conformity with the provisions regarding placement in the least restrictive environment set forth in Rule 2364.
- (b) The child's placement shall be:
 - (1) Determined at least annually;
 - (2) Based on the child's IEP;
 - (3) In as close proximity as possible to the child's home; and
 - (4) Based on consideration of community based early care and education settings such as a childcare, or Head Start.

2361.3 IEP Content

The content of the student's IEP shall be as set forth in rule 2363.8. For preschoolers, the IEP may also address how the child's disability affects his or her participation in developmentally appropriate play activities.

2362 Eligibility for Children Ages Six Years Through Twenty One

(a) A child shall be eligible for special education if:

- (1) He or she has one or more of the disabilities described in Rule 2362.1;

- (2) The disability results in an adverse effect on the child's educational performance in one or more of the basic skill areas as described in subsection (f), below; and
- (3) The student needs special education services to benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.

The three criteria listed above shall also be applied at the time the student receives a re-evaluation to determine eligibility.

- (b) A formal evaluation process, documented in a report as required by Rule 2362.2.5, shall be used to determine whether the above criteria are met.
- (c) Adverse Effect.

- (1) To conclude that a disability has an adverse effect on the student's educational performance, the EPT shall determine and document that, as a result of his or her disability, the student is functioning significantly below age and grade norms for age or grade peers in one or more of the basic skills defined in Rule 2362(f).
- (2) "Significantly below age or grade norms" means the 15th percentile or below, or a -1.0 standard deviation or more below the mean, or the equivalent, as reflected by performance on three or more of the following measures of school performance, generally over a six month period of time.
 - (i) Standard or percentile scores on an individually administered nationally normed achievement test;
 - (ii) Grades;
 - (iii) Curriculum-based measures;
 - (iv) Criterion-referenced or group-administered norm referenced assessments;
 - (v) Student work, language samples or portfolios.
- (3) With respect to each basic skill considered, the EPT shall specifically identify in its report:
 - (i) Each type of measure considered by the Team;

- (ii) The finding of the Team, with respect to each measure considered, as to whether and why the measure met (or did not meet) the 15th percentile, -1.0 standard deviation, or equivalent standard, in order to support a finding of adverse effect;
 - (iii) The specific testing data/scores, student work, and/or education records relied upon by the Team to support its finding under subparagraph (ii) that a measure did or did not meet the standard; and
 - (iv) A statement of each basic skill area in which the disability was determined to have an adverse effect, based upon (i)-(iii).
- (d) A child may not be determined to be eligible under these rules if the determinant factor for that eligibility decision is lack of instruction in reading or math, or limited English proficiency; and the child does not otherwise meet the eligibility criteria of these rules.
- (e) If a child has a disability that results in an adverse effect on his or her educational performance in one or more of the basic skills, the EPT shall, in the following order:
 - (1) Consider the interventions, services, and accommodations the student may need, and
 - (2) Determine and provide justification that the student requires specially designed instruction that cannot be provided within the school's standard instructional conditions, or provided through the school's educational support system.
- (f) Basic skill areas—
 - (1) Unless otherwise specified in the disability category in these rules, basic skill areas are:
 - (i) Oral expression;
 - (ii) Listening comprehension;
 - (iii) Written expression;
 - (iv) Basic reading skills;
 - (v) Reading comprehension;
 - (vi) Mathematics calculation;
 - (vii) Mathematics reasoning; and

(viii) Motor skills.

- (2) For an individual with a sensory impairment, one or more comparable basic skills shall be considered to serve as an appropriate substitute for one or more of the above basic skills, for example, Braille skills for basic reading skills.

2362.1 Categories of Disability

The existence of one or more of the following categories of disability shall be established according to the criteria set forth below.

- (a) A learning impairment or delay in learning shall be of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations from the mean of a test of intellectual ability and the student shall show concurrent deficits in adaptive behavior.
- (b) A specific learning disability of a perceptual, conceptual, or coordinative nature shall be demonstrated by a severe discrepancy between a student's ability and his or her achievement in one or more of the following basic skill areas:
- (1) Oral expression;
 - (2) Listening comprehension;
 - (3) Written expression;
 - (4) Basic reading skills;
 - (5) Reading comprehension;
 - (6) Mathematics calculation; or
 - (7) Mathematics reasoning.

The discrepancy shall be greater than 1.5 standard deviations below the expected achievement level for a given ability level, and shall not be primarily the result of a visual, hearing, or motor handicap; learning impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.

- (c) A visual impairment, as evaluated by an optometrist or ophthalmologist, shall be demonstrated by central visual acuity that is 20/70 or worse in the better eye with correction, or a peripheral field that subtends an angle not greater than 20 degrees

at its widest diameter. For the purposes of this disability, mobility and orientation skills shall also be considered to be basic skills and special education services.

(d) Deafness or being hard of hearing, as determined by an audiologist, otologist, or otolaryngologist, shall be demonstrated by a 25 decibel HL threshold (ANSI, 69) or worse for one or more of the frequencies 250-8000HZ, in one or both ears.

(e) A speech or language impairment shall be demonstrated by significant deficits in listening comprehension or oral expression. The EPT shall obtain an opinion from a licensed speech-language pathologist as to the existence of a speech or language impairment and its effect on the student's ability to function. The determination of a speech or language impairment shall be based on the following criteria:

(1) Listening comprehension. A significant deficit in listening comprehension exists when a student demonstrates a deficit that is at least 2.0 standard deviations from the test mean on one or more measures of auditory processing or comprehension of connected speech. Auditory processing or comprehension include:

- (i) Semantics
- (ii) Syntax
- (iii) Phonology
- (iv) Recalling information
- (v) Following directions
- (vi) Pragmatics.

(2) Oral Expression. For purposes of determination of a speech and language impairment, a significant deficit in oral expression exists when a child demonstrates one or more of the following conditions:

(i) Voice. A significant deficit in voice exists when both of the following are present:

(A) Documentation by an otolaryngologist that treatment is indicated for a vocal pathology or speech related medical condition, and

(B) Abnormal vocal characteristics in pitch, quality, nasality, volume or breath support, which persist for at least one month.

(ii) Fluency. A significant deficit in fluency exists when the student exhibits one or more of the following behaviors:

- (A) Part word repetitions or sound prolongations occur on at least 5% of the words spoken in two or more speech samples, or
 - (B) Sound or silent prolongations exceed one second in two or more speech samples, or
 - (C) Secondary symptoms or signs of tension or struggle during speech which are so severe as to interfere with the flow of communication.
- (iii) Articulation. A significant deficit in articulation attributed to an organic or functional disorder exists when a student is unable to articulate two or more of the unrelated phonemes in connected speech, set forth below, and it is not attributed to dialect or second language difficulties.

Age	Phonemes
6.0 - 6.11	m, n, h, w, p, b, t, d, g, f, k, v, t j (y), tʃ (ch), θ th
7.0 - 7.11	ʃ (sh), dʒ (j)
8.0 - above	l, r, θ (th), l, θ r consonant blends z, ʒ (zh), s and s consonant blends

- (iv) Oral Discourse. A significant deficit exists when a student demonstrates a deficit of at least 2 standard deviations from the test mean on one or more measures of oral discourse. Oral discourse includes:
- (A) Syntax,
 - (B) Semantics,
 - (C) Phonology, and
 - (D) Pragmatics.
- (f) An orthopedic impairment shall be the result of congenital anomaly, disease, or other condition. The EPT shall obtain an opinion from a licensed physician as to the existence of the orthopedic impairment and its effect on the student's ability to function.

- (g) An other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment. The cause of the health impairment shall be chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever and sickle cell anemia.

In order to determine the existence of an other health impairment and its effect on the student's ability to function, the EPT shall obtain an opinion from a person:

- (1) Whose professional licensure authorizes him or her to offer an opinion on the existence of the specific condition suspected to be an other health impairment and its effect on the student's ability to function, and
- (2) Who has specific training and experience in diagnosing and recommending treatment for the specific condition suspected.

(h) emotional disturbance shall be defined as follows:

- (1) "emotional disturbance" means a condition, including schizophrenia, exhibiting one or more of the following characteristics over a long period of time and to a marked degree:
 - (i) An inability to learn that cannot be explained by intellectual, sensory or health factors.
 - (ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - (iii) Inappropriate types of behaviors or feelings under normal circumstances.
 - (iv) A general pervasive mood of unhappiness or depression.
 - (v) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (2) A student who is socially maladjusted shall not be considered to be emotionally disturbed unless he or she also meets the definition of emotional disturbance, as set forth in subdivision (1). A social maladjustment is a persistent pattern of violating societal norms, such as multiple acts of truancy, or substance or sex abuse, and is marked by struggle with authority, low frustration threshold,

impulsivity, or manipulative behaviors. A social maladjustment unaccompanied by an emotional disturbance is often indicated by some or all of the following:

- (i) Unhappiness or depression that is not pervasive;
 - (ii) Problem behaviors that are goal-directed, self-serving and manipulative;
 - (iii) Actions that are based on perceived self-interest even though others may consider the behavior to be self-defeating;
 - (iv) General social conventions and behavioral standards are understood, but are not accepted;
 - (v) Negative counter-cultural standards or peers are accepted and followed;
 - (vi) Problem behaviors have escalated during pre-adolescence or adolescence;
 - (vii) Inappropriate behaviors are displayed in selected settings or situations (e.g., only at home, in school or in selected classes), while other behavior is appropriately controlled; and/or
 - (viii) Problem behaviors are frequently the result of encouragement by a peer group, are intentional, and the student understands the consequences of such behaviors.
- (3) The EPT shall obtain an opinion of a licensed psychologist or psychiatrist as to the existence of an emotional disturbance and its effect on the student's ability to function, based on the above criteria.
- (4) Upon determination of the existence of an emotional disturbance disability, the parent shall be informed of the availability of interagency coordination of services, as defined by 33 V.S.A. §4301 et seq.
- (i) Autism means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three.
- (1) Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance as defined in Rule 2362.1(h).

- (2) A child who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in subsection (i)(1) are satisfied.
- (3) The EPT shall obtain an opinion of a licensed physician as to the existence of autism and its effect on the student's ability to function.
- (j) Traumatic brain injury shall be an injury to the brain caused by an external physical force or by an internal occurrence such as a stroke or aneurysm, resulting in total or partial functional disability or psychosocial impairment, or both. The EPT shall obtain an opinion of a licensed physician as to the existence of a traumatic brain injury and its effect on the student's ability to function, as defined by the following criteria:

The condition includes open or closed head injuries resulting in impairments in one or more areas, including cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

The condition does not include brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.
- (k) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness.
- (l) Multiple-disabilities means concomitant impairments such as learning impairment-blindness, learning impairment-orthopedic impairment, (etc.) resulting in severe educational needs that cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

Procedures for Evaluation and Determination of Eligibility

2362.2 Definition and Purpose

An evaluation is a compilation of information that is designed to assist:

- (a) The EPT in determining eligibility for special education;
- (b) The IEP team in developing instructional goals and objectives;
- (c) The IEP team in designing an appropriate placement in the least restrictive environment; and

- (d) Instructors in making accommodations in curriculum, materials, and mode of presentation.

2362.2.1 General Requirements for Evaluations

For purposes of this section, "evaluations" are defined as observations, tests and other diagnostic measures, individually selected and administered to determine the existence of a disability or a need for services.

- (a) Evaluations shall:

- (1) Be conducted by persons who are trained in the administration of evaluation procedures and in the scoring and interpretation of the results in conformity with the instructions provided by their producer;
- (2) Be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so;
- (3) Be selected and administered so as not to be racially or culturally discriminatory;
- (4) Include those instruments designed to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

- (b) No single evaluation procedure shall be used as the sole criterion for determining special education eligibility;

- (c) In evaluating each child's eligibility for special education, the evaluation shall be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child may be or has been classified;

- (d) The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

- (e) A variety of assessment tools and strategies shall be used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining—

- (1) Whether the child is eligible for special education services; and
 - (2) The content of the child's IEP.
- (f) The EPT shall use:
- (1) Technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
 - (2) Materials and procedures to assess a child with limited English proficiency which are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills;
 - (3) Specific tests which are valid for the purpose for which they are used and for the individual to whom they are administered;
 - (4) Tests which are selected and administered so as to ensure that when administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, except where those skills are the factors which the test purports to measure;
 - (5) A formal process for correcting regression error when determining whether a severe discrepancy exists between cognitive ability and achievement. The correction for the effects of regression may be achieved through one of the following:
 - (i) The use of regression calculation charts; or
 - (ii) The use of statistical procedures which eliminate the effects of regression toward the mean.
 - (6) Bands of confidence or standard error of measurement when reporting and interpreting test scores and other evaluation results, whenever they are available; and
 - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

2362.2.2 Personnel

- (a) Evaluations shall be arranged for or conducted by an EPT with assistance, where appropriate, from other specialists (psychological, medical, etc.)
- (b) The EPT membership shall include:
 - (1) A local education agency representative (LEA Representative) who:
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general curriculum;
 - (iii) Is knowledgeable about the availability of resources of the school district; and
 - (iv) Could be another school district member of the EPT as long as the criteria in (i) – (iii) above are met.
 - (2) At least one special education teacher of the child, or if appropriate, at least one special education service provider for the child;
 - (3) At least one regular education teacher of the child, to the extent appropriate, if the child is, or may be, participating in the regular education environment.
 - (4) The student when his or her transition needs or services will be considered and other agencies likely to be responsible for providing or paying for transition services;
 - (5) At the discretion of the parent or the school district, other individuals who, in the opinion of the parents or school district, have knowledge or special expertise regarding the child, including related services personnel, as appropriate.
 - (6) An individual who can interpret the instructional implications of evaluation results, who also may be a member of the team as described in sections (1), (2), (3) and (5) above;
 - (7) The parent(s), guardian or educational surrogate parent of the child who shall be given a meaningful opportunity to contribute information to the development of an evaluation plan, and
 - (8) If appropriate, the child.

(c) The EPT membership for a child suspected of having a specific learning disability shall also include the following people:

(1) The child's regular education teacher or

(2) If the child does not have a regular education teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, special education teacher, or remedial reading teacher.

(d) Decisions by the EPT

Where the EPT cannot achieve consensus on any matter before it, the LEA Representative shall decide the matter.

2362.2.3 Time Frame and Consent

(a) When a school district receives or initiates a referral for an evaluation for a student who may be eligible for special education, an EPT shall be convened without undue delay.

(b) The evaluation shall be completed and the report issued within 60 calendar days from either:

(1) The date parental consent has been received by the school district.

(i) As part of an initial or reevaluation to determine eligibility for special education, consent to a written evaluation plan shall be required when the EPT determines that the gathering of new information is needed. Consent shall not be required where the EPT will be relying solely on a review of existing data.

(ii) When parental consent cannot be obtained.

- (A) If the parent of a child refuses consent for an initial or a re-evaluation, where consent is required, the school district may continue to pursue those evaluations by using due process or mediation procedures.
- (B) For a reevaluation, if the parent fails to respond to the school district's reasonable measures to obtain parental consent, the school district need not obtain consent before conducting the reevaluation as outlined on the evaluation plan. The school district shall document attempts to contact the parent through:
 - (aa) Detailed records of telephone calls made or attempted and the results of those calls;
 - (bb) Copies of correspondence sent to the parents and any responses received; and/or
 - (cc) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

or;

- (2) The date on the district's Notice, which informs parents that it will be reviewing existing data as the sole basis for the evaluation or reevaluation.
- (c) If completion of the evaluation will be delayed for a period exceeding 60 calendar days as specified in sections (1) and (2) above, the parent shall be given written notice of the delay and a schedule of evaluation activities. Such notice shall be sent to a parent before the expiration of the 60-calendar day period. A notice of delay shall only be used for exceptional circumstances, which must be documented.
- (d) Consent shall be obtained before individual tests can be administered to students who receive special education services unless the assessment is being administered as an alternate assessment to district-wide or statewide assessments.

2362.2.4 Evaluation and Procedures

- (a) A comprehensive and individual initial evaluation shall be conducted before the initial provision of special education and related services to a child. Reevaluations of each eligible child shall be conducted at least once every three years or sooner, as warranted. Reevaluations shall also be conducted at the request of the parent or teacher.

- (b) A review of existing data may be used to determine or re-determine eligibility. The special education teacher or service provider shall contact members of the EPT to determine whether the EPT needs to have a formal meeting to review data when the child's eligibility will be re-determined. If a parent requests that the EPT review data through a formal meeting, then a formal meeting with required notices shall be held.
- (c) A formal meeting shall be required whenever the initial eligibility of the child will be determined.
- (d) In conducting an evaluation or arranging for its conduct, the EPT shall compile sufficient and appropriate information so that necessary judgments concerning eligibility, placement, program planning, and accommodations can be made.
- (e) Prior to conducting an initial or re-evaluation for eligibility purposes, the EPT shall complete a written evaluation plan which lists the areas to be assessed, the procedures to be used in carrying out the evaluation, and personnel by title responsible for performing the evaluations.
- (f) The EPT, where appropriate, shall assess all student characteristics and other factors that may have a significant influence on eligibility, services to be offered or accommodations to be made, including, but not limited to:
 - (1) Physical characteristics:
 - (A) Vision
 - (B) Hearing
 - (C) Health
 - (D) Medical
 - (E) Nutrition
 - (2) Social, behavioral, or emotional characteristics:
 - (A) Self-esteem
 - (B) Self-control
 - (C) Interaction with peers and adults
 - (3) Adaptive behavior across settings:
 - (A) Independence skills
 - (B) Coping skills
 - (C) Self-care skills

(4) Relevant life circumstances:

- (A) Family
- (B) Community
- (C) Environmental factors

(5) Speech characteristics:

- (A) Articulation
- (B) Fluency
- (C) Voice

(6) Language and communication skills

(7) Intellectual or cognitive characteristics:

- (A) Learning abilities
- (B) Learning styles
- (C) Reasoning

(8) Areas of concern in the basic skills areas:

- (A) Oral expression
- (B) Listening comprehension
- (C) Written expression
- (D) Basic reading skills
- (E) Reading comprehension
- (F) Mathematics calculation
- (G) Mathematics reasoning
- (H) Motor skills

(9) Vocational needs

(10) Skills in the learning environment

(11) Transition needs beyond graduation for students age 14 and above

(12) Assistive technology needs

- (13) The EPT shall assess the student's current level of performance in all curriculum areas with respect to which special education, related services and supplementary aids and services may be required.
- (14) Observation:
 - (A) For an individual with a suspected learning disability, a classroom observation pursuant to this rule is required; for all other categories of disability such an observation is optional. When the evaluation plan provides for an observation, such observation shall be conducted in accordance with the following requirements.
 - (aa) Where the student is in attendance at a school, that student's classroom behavior shall be observed and reported in writing by trained personnel, other than the student's teacher. The report should address:
 - a) The effect of the classroom environment on the student;
 - b) Teacher and peer interactions;
 - c) Ability of the student to benefit from materials, curriculum and instructional methods;
 - d) Ability to follow oral and written directions;
 - e) Ability to communicate ideas in oral and written form;
 - f) Ability to attend to instruction and complete assignments on time; and
 - g) Other observable student characteristics or instructional conditions that may either adversely affect the student's rate of learning or assist in developing recommendations for the student.
 - (bb) Students who are enrolled in a program of home study or who receive instruction delivered in a home, hospital, preschool or childcare setting may be observed in their instructional environment by trained personnel. This observation shall be reported in writing to the EPT.

- (cc) If, after reasonable efforts have been made, it is not possible to conduct a classroom observation due to chronic truancy or other extenuating circumstances, there shall be documentation of efforts made to observe the student in an instructional environment.
- (g) An EPT shall decide whether a review of existing data is sufficient to evaluate the child in the characteristics identified in section (e) above or whether new information must be obtained.
 - (i) A review of existing data could be obtained through the following:
 - (A) Evaluations and information in the child's educational records at the school, or provided by EPT members, including the parents of the child;
 - (B) Current classroom-based assessments and observations; and
 - (C) Observations by teachers and related service providers.
 - (ii) On the basis of the review of existing data, and with input from the child's parents, the EPT shall identify what additional data, if any, are needed to determine –
 - (A) Whether the child is eligible for special education or continues to be eligible for special education;
 - (B) The present levels of performance and educational needs of the child; and
 - (C) Whether any additions or modifications to the special educational and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.
- (h) If the EPT can base the eligibility decision on existing data:
 - (1) The parents shall be notified of that determination and the reasons for it;
 - (2) No parental consent is necessary for the assessment; and
 - (3) The parent shall be informed in the Evaluation Plan Notice and at the EPT eligibility meeting, that if no new data are needed in the judgment of the other EPT members and the parent believes otherwise, the parent may request and receive an assessment to determine whether, for purposes of services under these regulations, the child continues to be a child with a disability.

- (i) If the EPT requires more than existing information, the parent shall be provided with the evaluation plan and asked to sign a consent to have the EPT gather new data, administer tests and conduct formal observations.
- (j) Without parental consent, the gathering of new data, administration of tests and conducting of formal observations may not proceed. In the instance where a parent refuses consent, the school district may follow the options listed at Rule 2365.1.3(d)(2).
- (j) The EPT shall ensure that information obtained from the written evaluation plan is documented and carefully considered. When the EPT completes its findings it shall issue a written report pursuant to Rule 2362.2.5.
- (k) If there is reason to believe a child may no longer need special education services, a school district shall evaluate the child pursuant to Rule 2362.2.4 and provide documentation in an EPT report as to whether the child no longer meets one or more of the eligibility criteria.
- (l) If a student is due to graduate with a regular high school diploma or will be attaining the age when his/her entitlement to a FAPE ends, there is no requirement to conduct a special education evaluation. The school district shall send a notice to the student and his/her parent(s) that a change of placement is scheduled to occur and give the reasons why.

2362.2.5 Evaluation and Planning Team Report

- (a) When all necessary information is collected, the EPT shall prepare a written report that documents whether the child is eligible. When a student is found eligible, the report shall be available for use by the IEP team in program planning. The report shall include the following and shall be provided to the parent by the EPT:
 - (1) A conclusion supported by a rationale as to whether or not the student is eligible for special education based on the following:
 - (i) The presence or absence of a disability;
 - (ii) If there is a disability, whether it has an adverse effect on educational performance in one or more of the basic skill areas, and if (i) and (ii) are present,

- (iii) Whether the student needs special education services to benefit from his or her educational program and that this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school.
- (2) The evaluation procedures used including:
- (j) A Description of any modifications or changes made from the evaluation procedures specified in the evaluation plan; or
 - (ii) Changes which were necessary in test administration as described in Rule 2362.2.1;
- (3) A summary of all educationally relevant information collected during the evaluation, including educational, medical and psychological information and a summary of other factors considered;
- (4) Recommendations as to the need for accommodations in curriculum, assessments, material, or programmatic adaptation, behavior management interventions, supplemental aids and services;
- (5) The initials of all team members indicating agreement or disagreement with the eligibility conclusion and a statement of the reasons for any disagreement; and
- (6) The written report of an observation of the student, if an observation has been conducted.

2362.2.6 Students Who Are Determined to Have a Disability, But Are Not Eligible for Special Education

- (a) When an EPT determines that a student has a disability, but is not eligible for special education, it shall recommend accommodations, as needed, in such areas as assessment procedures, curriculum, material or programmatic adaptations, behavior management interventions, and supplemental aids and services. These recommendations shall be included in the written Evaluation Plan and Report. The Evaluation Plan and Report for such a student shall be referred to the student's building administrator who shall arrange for a Section 504 Team to consider whether:
- (1) The student's disability and needs will require a Section 504 Plan or
 - (2) The student's needs can be met within the school's standard instructional

conditions and through its educational support system.

- (b) If the EPT determines that the student has a disability, but is not eligible for special education, it may proceed to operate as a Section 504 team to determine whether the child is eligible for reasonable accommodations under Section 504.

2362.2.7 Independent Educational Evaluation

An “independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question.

- (a) Upon completion of a school district evaluation, a parent may request an independent educational evaluation at public expense if he or she disagrees with the evaluation obtained by the school district. Except as provided in this rule, the school district shall either pay the full cost of the requested evaluation, or ensure that the evaluation is otherwise provided at no cost to the parent.
- (b) If a parent requests an independent educational evaluation, the school district shall, without unnecessary delay, either:
 - (1) Initiate a hearing to show that its evaluation is appropriate; or
 - (2) Ensure that an independent educational evaluation is provided at no cost to the parent.
- (c) A school district shall provide to a parent who requests an independent educational evaluation information about where such an evaluation may be obtained.
- (d) Any school district criteria under which an independent evaluation may be obtained, including the location of the evaluation and the qualification of the examiner, shall be the same as the criteria that the school district uses when it initiates an evaluation. Criteria established by a school district under this section shall not interfere with the parent's right to an independent educational evaluation.
- (e) Except as provided in (d) above, timelines or conditions related to obtaining an independent educational evaluation may not be imposed by the school district.
- (f) A school district may pursue mediation or a due process hearing to demonstrate that an independent educational evaluation obtained by a parent does not meet school district criteria.

- (g) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the school district's expense.
- (h) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the district's evaluation. However, an explanation by the parent may not be required, and the school district may not unreasonably delay either providing the independent educational evaluation at no cost to the parent or initiating a due process hearing to defend the district's evaluation.
- (i) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:
 - (1) Shall be considered by the school district's EPT, if the evaluation meets the district's criteria, whenever it makes any decision with respect to the provision of FAPE to the child; and
 - (2) May be presented as evidence at a hearing regarding the child.
- (j) If a hearing officer requests an independent educational evaluation as part of a hearing, the school district is responsible for ensuring that the independent evaluation is completed at no cost to the parent.

2363 Individualized Education Program (IEP)

2363.1 An IEP shall consist of:

- (a) A description of all special education services, related services, and supplementary aids and services that the child will need to be able to derive benefit from his/her educational program;
- (b) A description of the special education program; and
- (c) Accommodations and/or modifications necessary for the child to progress in the general education curriculum.

2363.2 Timelines

An IEP shall be:

- (a) Developed within thirty days of a determination that the child is eligible for special education;
- (b) In effect before special education and related services are provided to the child;
- (c) In effect at the beginning of each school year unless the child has been determined to be eligible within 30 days prior to the first day of school, in which case subparagraph (a) above applies; and
- (d) Implemented as soon as possible following the IEP meeting.

2363.3 Responsibility of School Districts for IEPs

- (a) Except as otherwise provided by these rules, each school district shall ensure that an IEP is developed and implemented by the responsible school district for each eligible child residing in that district.
- (b) A school district shall not be responsible for developing an IEP for a child enrolled by his or her parents in an independent school or home school program, if the school district has made a free appropriate public education available to the child and the parents have elected to place the child in an independent school or a home school program.

2363.4 IEP Team

- (a) The school district shall ensure that the IEP team for each eligible child includes:
 - (1) A local education agency representative (LEA Representative) who:
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general curriculum;
 - (iii) Is knowledgeable about the availability of resources of the school district; and
 - (iv) May be another school district member of the IEP team as long as the criteria in (i) – (iii) above are met.
 - (2) At least one special education teacher of the child, or if appropriate, at least one special education service provider for the child;

- (3) At least one regular education teacher of the child, to the extent appropriate, if the child is, or may be, participating in the regular education environment. The teacher shall assist in the determination of appropriate positive behavioral interventions and strategies, supplementary aids and services, program modifications, supports for school personnel that will be provided to allow the child an opportunity for participation and progress in the general curriculum and the attainment of annual IEP goals;
 - (4) At the discretion of the parent or the school district, other individuals who, in the opinion of the parents or school district, have knowledge or special expertise regarding the child, including related services personnel, as appropriate;
 - (5) An individual who can interpret the instructional implications of evaluation results, who also may be a member of the team as described in sections (1), (2), (3) and (4) above;
 - (6) The parent(s), guardian or educational surrogate parent of the child;
 - (7) If appropriate, the child; and
 - (8) In the case of a child with a specific learning disability, at least one person qualified to conduct individualized diagnostic examinations of children, such as a school psychologist, speech-language pathologist, special education teacher, or remedial reading teacher.
- (b) Additional participants when the transition needs of the student will be discussed.
- (1) When a student is age 14 (or younger, if determined appropriate by the IEP team), the school district shall begin inviting the student to attend his/her IEP meetings to discuss transition service needs that focus on instruction, educational experiences, or specific courses of study; and
 - (2) When a student is age 16 (or younger, if determined appropriate by the IEP team), the school district shall continue inviting the student to attend his/her IEP meetings to discuss transition services.
 - (3) If the student does not attend the IEP meeting when invited, the school district shall take other steps to ensure that the student's preferences and interests are considered.

- (4) In implementing the requirements with respect to transition services, the school district also shall invite a representative of any other agency that is likely to be responsible for providing or paying for such services.
- (5) If an agency invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain participation of the other agency in the planning of any transition services.

(c) Decisions by the IEP team

If the team cannot reach consensus, the LEA Representative on behalf of the school district shall determine the contents of the IEP pursuant to Rule 2363.8 and shall notify the parents of their rights to seek mediation, file an administrative complaint or request a due process hearing.

2363.5 Parent or Student Participation in IEP Meeting

- (a) Each school district shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:
 - (1) Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend; and
 - (2) Scheduling the meeting at a mutually agreed upon time and place.
 - (i) The school district shall schedule meetings with parents at a mutually agreed upon time and place. When a satisfactory agreement on such time or place cannot be reached, the district shall use other methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.
 - (ii) When the district is unable to arrange the parents' participation, the district shall convene the IEP meeting to meet its obligation to provide appropriate services to the child as set forth in rule 2363.2 of this section.
- (b) A meeting may be conducted without a parent in attendance, if the school district is unable to convince the parent to attend. Under these circumstances, the school district shall maintain a record of its attempts to arrange a mutually agreed upon time and place, such as:
 - (1) Detailed records of telephone calls made or attempted and the results of those calls;

- (2) Copies of correspondence sent to the parents and any responses received; and
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (c) The school district shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for a parent who is deaf or whose native language is other than English.
- (d) When the student reaches age 17, the school district shall notify the parent and the student that at age 18, the student, unless he/she is under guardianship, will become an adult under Vermont law. At that time, the district shall send a notice to the student of his/her IEP meetings. The parent shall be given a copy of the notice unless, as set forth in rule 2365.1.13, the student is incarcerated. When a student becomes an adult, the parents may attend an IEP meeting at the discretion of the district or the student pursuant to Rule 2363.4(a)(4).
- (e) A teacher or parent may request an IEP meeting at any time when they believe a component of the IEP should be changed. When the district receives the request:
- (1) The school district shall convene a properly notified IEP meeting, or
 - (2) Refuse to convene an IEP meeting and shall provide written notice to the parent explaining why the district has concluded a meeting is not necessary to ensure the provision of FAPE to the student.
 - (3) The district's notice shall inform the parent of his or her right to initiate a due process hearing if the parent disagrees with the district's decision not to convene a meeting under this subsection.

2363.6 Notice About IEP Meeting

- (a) A notice of an IEP meeting shall:
- (1) Indicate the purpose, time, and location of the meeting;
 - (2) State who will be in attendance; and
 - (3) Inform the parents of the right of the school district and the parents to invite other people who, in their opinion, have knowledge or special expertise about the child.

- (b) Beginning at age 14, or younger if appropriate, for a student with a disability the notice shall advise the parents and student of the requirements of Rule 2363.4(b).

2363.7 Development, Review, and Revision of IEP

- (a) In the development, review, and revision of an IEP, the IEP team shall consider:
 - (1) The strengths of the child and the concerns of the parent for enhancing the education of their child;
 - (2) The results of the initial or most recent evaluation of the child; and
 - (3) As appropriate, the results of the child's performance on any general State or district-wide assessment programs.
- (b) The IEP team shall also consider the following special factors:
 - (1) In the case of a child with limited English proficiency, the language needs of the child as those needs relate to the child's IEP;
 - (2) In the case of a child who is blind or visually impaired, provision for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
 - (3) The communication needs of the child, and in the case of a child who is deaf or hard of hearing, the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode;
 - (4) Whether the child requires assistive technology devices and services.
 - (5) When the evaluation data indicates that the student's behavior is impeding his or her learning or the learning of others, appropriate positive behavioral interventions and strategies to assist the child to develop skills in areas such as:
 - (i) Social skills;

- (ii) Anger management; and/or
 - (iii) Conflict resolution.
- (6) Supplementary aids and services, program modifications or supports for the child or school personnel who will be working with the child to help him/her:
- (i) Attain IEP annual goals;
 - (ii) Progress in the general curriculum;
 - (iii) Participate in extra-curricular activities; and
 - (iv) Be educated in the least restrictive environment.
- (7) Whether a child needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the child to receive a FAPE.
- (c) Each school district shall ensure that the IEP team:
- (1) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
 - (2) Revises the IEP as appropriate to address:
 - (i) A lack of expected progress toward the annual goals;
 - (ii) A lack of expected progress in the general curriculum, if appropriate;
 - (iii) The results of any re-evaluation;
 - (iv) Information about the child provided to, or by, the parents;
 - (v) The child's anticipated needs; or
 - (vi) Other matters.

2363.8 Content of IEP

An IEP that contains information under one component need not repeat the same information under another component. The IEP for each child with a disability shall include:

- (a) A statement of the child's present levels of educational performance, including:
 - (1) The child's abilities, acquired skills, and strengths;
 - (2) How the child's disability affects the child's involvement and progress in the general curriculum; or
 - (3) For preschool children, how the disability affects the child's participation in activities appropriate for the child;
- (b) Measurable annual goals related to the child's present levels of educational performance which shall:
 - (1) Be stated as measurable short-term objectives or benchmarks with projected dates for accomplishment;
 - (2) Enable the child to be involved in and progress, to the extent appropriate, in the same curriculum as for nondisabled children. For preschool children, goals shall include participation in activities appropriate for children without disabilities;
 - (3) Enable the child to meet other educational needs that result from his or her disability;
 - (4) Be accompanied by a method of reporting the child's progress to the parents at least as often as other parents in the school receive progress reports. A progress report shall inform parents of:
 - (i) Their child's progress toward the annual goals; and
 - (ii) The extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.
- (c) Special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports that will be provided for school personnel to enable the child:
 - (1) To advance appropriately toward attaining his or her IEP annual goals;
 - (2) To be involved in and progress in the general curriculum and to participate in extra-curricular and other non-academic activities; and

- (3) To be educated and participate with a variety of children who do and do not have disabilities.
- (d) The projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications;
- (e) The general characteristics of the child's placement. The school district shall determine the child's specific placement meeting those characteristics. The IEP shall also include an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular classroom, general curriculum, extra-curricular and other non-academic activities;
 - (1) Where the student's placement is a residential placement pursuant to Rule 2366.9, the student's IEP shall contain annual goals and short-term objectives or benchmarks designed to reintegrate the student into a local school district placement, and a description of how they will lead to reintegration.
 - (2) Where a student's placement results in his or her removal from the regular education environment for more than 50% of the student's school week, the IEP shall contain annual goals and short-term objectives or benchmarks designed to reintegrate the student into the regular education environment at the earliest appropriate opportunity.
- (f) A statement of any individual accommodations in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment;
 - (1) If the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of:
 - (i) Why that assessment is not appropriate for the child; and
 - (ii) How the child will be assessed.
- (g) A description of any extended school year services (ESY) which the IEP team finds are necessary to provide a FAPE to the student.
 - (1) ESY services shall be provided only if a child's IEP team determines that the services are necessary for the provision of FAPE to the child because one or more of the following factors is evident:

- (i) ESY is essential to permit the student an opportunity to reach reasonably set educational goals;
 - (ii) There has been a significant amount of regression over the past winter, spring and summer vacations and recoupment did not occur within a reasonable amount of time;
 - (iii) The severity of the student's disability presents a danger of substantial regression; or
 - (iv) The student's transition needs require continued programming beyond the school year IEP.
- (2) A school district or IEP team may not limit extended school year services to students with particular disabilities.
- (3) A school district shall not adopt a policy that limits the type, amount, or duration of ESY services for all children.
- (h) Transition needs and services

(1) Needs—

For students age 14 or younger, if determined appropriate by the IEP team, a statement of the transition service needs of the student under the applicable components of the student's IEP that focuses on the student's courses of study, such as participation in advanced-placement courses or a vocational education program. The transition service needs shall be updated annually,

(2) Services—

For students age 16 or younger, if determined appropriate by the IEP team, a statement of transition services as set forth in Rule 2360.3.1(c) including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

- (i) Interagency linkages to provide needed services shall be recorded on the IEP.
- (ii) If a participating agency, other than the school district, fails to provide the transition services described in the IEP, the school district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

- (iii) Nothing in these regulations shall relieve any participating agency of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.
- (i) A statement that reflects that the student and parents were informed that all rights accorded to the parents under these rules will transfer to the student when he or she reaches the age of 18. This statement must appear on the student's IEP one year before the student reaches the age of 18;
- (j) When appropriate, a Multi-year Plan approved by the superintendent or his or her designee. When approved, completion of the Multi-year Plan shall be stated as one of the goals in the student's IEP. When the Multi-year Plan requirements are met, the student shall be awarded a regular diploma.

2363.9 Consent to Provision of Special Education Services

When an IEP has been completed, a written copy shall be provided to the parent. If this is the student's first IEP, the parent shall be notified that before the school district may provide the services on the IEP, the parent must provide written consent for the initial provision of special education and related services.

- (a) A consent form shall be signed by the parent and received by the school district prior to the initial provision of IEP services.
- (b) If the parent refuses to provide written consent, the school district shall not seek to override the refusal by requesting a due process hearing, but may utilize one of the options in subsection (c) below.
- (c) If the parent provides written consent for the initial provision of IEP services before they have begun and then revokes the consent, the services shall not commence. The student shall remain eligible for services and the school district may attempt to resolve the matter with the parent by:
 - (1) Discussing the matter through appropriate informal means,
 - (2) Requesting mediation, or
 - (3) Requesting that the student be re-evaluated to determine if he or she continues to be eligible for special education services. A re-evaluation could consist of a review of existing data.

- (d) A parent may not revoke consent after services have begun. If a parent does not want some or all of the services to continue, services shall continue while the parent resolves his or her request through the following:
 - (1) Discussing the matter with the IEP team, which could include requesting a re-evaluation to determine continued eligibility, or
 - (2) Requesting mediation
 - (3) Filing an administrative complaint, or
 - (4) A due process hearing.

2363.10 Distribution and Explanation of the IEP Document

- (a) The student's IEP shall be made accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and
- (b) Each teacher and provider described above shall be informed of:
 - (1) His or her specific responsibilities related to implementing the child's IEP; and
 - (2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (c) The school district shall give the parent a copy of the student's IEP at no cost to the parent.

2363.11 IEP Requirements for Placements by School Districts in Independent Schools or Tutorial Programs

- (a) Before a school district places a student eligible for special education services in, or refers a student to, an independent school, or a tutorial program, the school district shall initiate and conduct a meeting to develop an IEP for the student.
- (b) The school district's placement shall be at no cost to the parents and the independent school or tutorial program shall provide an education that meets the standards that apply to education provided by the local school district.
 - (1) Placements by school districts in independent schools shall be in schools that have been approved according to Rule 2228.

- (2) Placements by school districts in tutorial programs shall be in programs that have been approved according to Rule 2230.
- (c) The school district shall ensure that a representative of the independent school or tutorial program either attends the meeting or is able to participate by other methods including individual or conference telephone calls.
- (d) After a child with a disability enters an independent school or a tutorial program, any meetings to review and revise the student's IEP may be initiated and conducted by the school or tutorial program in accordance with the written agreement as entered into in conformance with Rule 2228.4.2. If the independent school or tutorial program initiates and conducts these meetings, the school district shall ensure, to the extent required by Rule 2363.5, that an LEA Representative is involved in any decision about the student's IEP and agrees to any proposed changes in the IEP before those changes are implemented. Parent attendance shall be required and documented as set forth in Rule 2363.5.
- (e) When an independent school or a tutorial program implements a student's IEP, responsibility for compliance with the special education regulations with respect to that student remains with the school district.
- (f) A child placed in an independent school or a tutorial program by a school district shall retain all of the rights of a child on an IEP who is attending a public school.

2363.12 IEP For A Student Moving Into The School District When The Student Has Been Eligible For Special Education In Another State Or In Another Vermont School District

- (a) Child Moving From Another Vermont School District—

If a child eligible for special education services moves from one Vermont school district to another, the receiving school district shall either adopt the IEP the former school district developed for the child or develop a new IEP for the child. The receiving school district must implement the current IEP to the extent possible until a new IEP is developed. In the absence of exceptional circumstances, IEP services shall commence within one week of the time the child enrolls in the receiving school district.

- (b) Child Moving From an Out-Of-State School District—

If a child eligible for special education services in another state moves into a Vermont school district, the receiving school district shall provide a FAPE to that child, if the child is eligible under these rules. If it is not clear to the

district/supervisory union special education administrator that the child is eligible in Vermont, the school district shall initiate an evaluation process to determine initial eligibility in Vermont. The receiving school district shall implement the current IEP to the extent possible until a new IEP is developed.

2363.13 IEP Accountability

(a) Each school district shall:

- (1) Provide special education and related services to an eligible student in accordance with the student's IEP; and
- (2) Make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the IEP.

(b) These rules do not require that a school district, teacher, or other person be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. However, these rules do not prohibit a school district from establishing its own accountability systems.

(c) Nothing in this section limits a parent's right to ask for revisions of the student's IEP or to invoke due process procedures if the parent feels that the efforts required in paragraph (a) of this section are not being made.

2364 Least Restrictive Environment (LRE)

2364.1 General LRE Requirements

Each school district shall ensure that a student eligible for special education services shall be educated with his or her non-disabled chronological age peers, to the maximum extent appropriate in the school he or she would attend if he or she did not have a disability.

(a) Barriers to the participation of students with disabilities in the regular education environment shall be addressed whenever possible by the provision of accommodations, modifications, and supplementary aids and services rather than by placement in separate programs.

- (1) A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum;

- (2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment shall occur only if the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; or
- (3) In selecting the LRE, consideration shall be given to any potential harmful effect on the student or on the quality of services that he or she needs.

(b) Continuum of Alternative Placements.

- (1) Each school district shall ensure that a continuum of alternative placements is available to meet the needs of children who are receiving IEP services.
- (2) The continuum shall include instruction in regular classes, special classes, special schools, independent schools, home instruction and instruction in hospitals, and residential facilities.

(i) Procedures

- (A) The IEP team shall determine the educational placement for the child except as otherwise provided in Rule 2363.4(c).
- (B) Placement decisions shall be made on the basis of the student's individual circumstances and not on the basis of the student's disability category.
- (C) The placement decided upon shall be—
 - (aa) Determined at least annually;
 - (bb) Consistent with the other provisions of the child's IEP; and
 - (cc) As close as possible to the child's home.
- (D) LRE for Non-Academic and Extra-curricular Activities—

In providing or arranging for the provision of non-academic (examples: meals and recess periods) and extra-curricular services and activities, the school district shall insure that an eligible student participates with non-disabled students in those services and activities to the maximum extent appropriate to the needs of that student.

- (c) The IEP team may consider the cost of the provision of special education or related services to the child if:
 - (1) The IEP has been developed with the parents in accordance with Rules 2363 - 2363.9;
 - (2) The IEP team has determined that the child's placement contained in the IEP is appropriate for the child; and
 - (3) Each of the options under consideration by the IEP team for fulfilling the requirements of the child's IEP would constitute a free appropriate public education in the least restrictive environment for the child.
- (d) The Vermont Department of Education shall:
 - (1) Provide training and technical assistance to teachers and administrators in public and independent schools approved for the provision of special education services to assist them in implementing the LRE requirements in Rule 2364.
 - (2) Monitor a school district's compliance with LRE requirements. If there is evidence that a school district makes placements that are inconsistent with LRE requirements, the Department shall—
 - (i) Review the school district's justification for its actions;
 - (ii) Assist in planning and implementing any necessary corrective action; and
 - (iii) Apply as necessary the enforcement policy and procedures contained in the Vermont State Board of Education policy on "Denial of Federal Special Education Funds to A School District."

2364.2 Instruction for Homebound or Hospitalized Special Education Students

- (a) Children who are eligible for essential early education services who are homebound or hospitalized due to a medical condition and are unable to access the services outlined in their current IEP shall receive direct instruction as determined by the child's IEP team.
- (b) Homebound or hospitalized elementary special education students and elementary special education students whose IEPs call for tutorial services outside school shall

receive instruction sufficient to provide a FAPE pursuant to their IEPs, for no less than six hours per week unless inconsistent with medical recommendations.

- (c) Homebound or hospitalized secondary special education students and secondary special education students whose IEPs call for tutorial services outside school, shall receive instruction sufficient to provide a FAPE pursuant to their IEPs for no less than an average of two hours per subject per week unless inconsistent with medical recommendations.

2365 Parental Rights and Confidentiality of Information

2365.1 Parental Rights

2365.1.1 Notice; Content of Notice

A school district shall provide written notice to the parent or guardian of a student within a reasonable time before it proposes to initiate or change, or refuses to initiate or change, a student's identification, evaluation, educational placement or the provision of a free appropriate public education. This written notice shall contain:

- (a) A description of the action proposed or refused by the agency,
- (b) An explanation of why the district proposes or refuses to take the action,
- (c) A description of any options the district considered and reasons these options were rejected,
- (d) A description of evaluation procedures, tests, records, or reports upon which the action is based,
- (e) Other factors that are relevant to the proposed or refused action;
- (f) A statement that the parents of special education students have procedural protections as set forth in the Parental Rights in Special Education Notice developed by the Department and
- (g) Sources for parents to contact to obtain assistance in understanding the provisions of their parental rights in special education.

2365.1.2 Procedural Safeguards Notice

- (a) A copy of the Parental Rights in Special Education Notice shall be given to the parents at a minimum upon:
 - (1) Initial referral for an evaluation;
 - (2) Each notification of an IEP meeting;
 - (3) Re-evaluation of the child; and
 - (4) Receipt of a request for a due process hearing.
- (b) The Parental Rights notice shall include a full explanation of all of the procedural safeguards available to the parent as they relate to:
 - (1) Independent educational evaluation;
 - (2) Prior written notice;
 - (3) Parental consent;
 - (4) Access to educational records;
 - (5) Opportunity to present complaints to initiate due process hearings;
 - (6) The child's placement during pendency of due process proceedings;
 - (7) Procedures for students who are subject to placement in an interim alternative educational setting;
 - (8) Requirements for unilateral placement by parents of children in private schools at public expense;
 - (9) Mediation;
 - (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
 - (11) Civil actions;
 - (12) Attorneys' fees; and

- (13) Administrative complaint procedures, including a description of how to file a complaint and the timelines under those procedures.
- (14) The means by which a copy of a description of the procedural safeguards can be obtained.

(c) The Parental Rights notice shall be:

- (1) Written in language understandable to the general public;
- (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure:
 - (i) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) The parent understands the content of the notice; and
 - (iii) There is written evidence that (i) and (ii) above have been met.

2365.1.3 Parental Consent

(a) Informed parental consent shall be required:

- (1) Before conducting an initial evaluation or re-evaluation which consists of more than a review of existing data pursuant to Rule 2362.2.3(b)(1)(i);
- (2) Before the initial provision of special education and related services. Consent for initial evaluation may not be construed as consent for initial provision of special education services.

(b) Consent, where given, shall be in writing and shall indicate that it is given voluntarily with the knowledge that it may be withheld for any reason;

(c) Parental consent is not required:

- (1) Before reviewing existing data as part of an evaluation or a re-evaluation;
- (2) Before administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children; or

- (3) Before a re-evaluation, if the school district can demonstrate that it has documented its attempts to contact the parents through activities such as the following:
 - (i) Detailed records of telephone calls to the parents that were made or attempted,
 - (ii) Copies of correspondence with the parents, or
 - (iii) Detailed records of visits made to the parents' home or place of employment and results of those visits.
- (d) If the parents of a child refuse consent for an initial evaluation or a re-evaluation which includes the gathering of new information:
 - (1) The school district may continue to pursue these evaluations by seeking mediation, using due process, or reviewing existing data.
 - (2) The school district may decide not to pursue the evaluation and shall document its justification for doing so in the child's record.
- (e) Except as otherwise provided in these regulations, a school district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the school district.

2365.1.4 Mediation

- (a) A mediation system administered by the Department of Education shall be available to parents of students with disabilities, adult students with disabilities, school districts and other educational agencies involved in special education disputes.
- (b) The mediation process shall be voluntary on the part of the parties and shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights. Mediation may be terminated at any time by any of the parties or by the mediator.
- (c) The Department shall provide the services of mediators at no cost to the parties.
- (d) Requests for mediation shall be submitted to the Vermont Department of Education, Special Education Mediation Service (VDE-SEMS), 120 State Street, Montpelier, Vermont 05620-2501. The Department shall send each parent who requests mediation the Parents' Rights in Special Education Notice and shall send its

mediation procedures to all parties to the mediation. The agreement to mediate shall be in writing on a form prescribed by the Department and signed by all parties.

- (e) A request for mediation may be made at any stage of due process proceedings, administrative complaint procedures, or court review. Parties to a due process proceeding or administrative complaint who elect to mediate shall arrange directly with the hearing officer or Commissioner respectively any waiver of applicable time-lines for the issuance of a decision.
- (f) The Department of Education shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques.
- (g) Mediators shall:
 - (1) Be knowledgeable in law and regulations relating to the provision of special education and related services.
 - (2) Not be employees of any school district and shall not have any personal or professional conflicts of interest.
 - (3) Be assigned to a case on a random (e.g. rotation) basis from the list, unless the parties otherwise agree on the selection of the individual who will mediate.
 - (4) Be assigned to a case by the Department within ten days of receipt of a joint written request for mediation or upon receipt of one party's written request and telephone confirmation by the other party.
- (h) Each party to mediation shall ensure that a person in attendance has decision-making authority for the party. Parents may be accompanied to the mediation by an advocate, support person, and/or family members. School districts may be represented by legal counsel only when the parents are represented by legal counsel.
- (i) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties.
- (j) The mediation process is confidential. The mediator shall not be called as a witness in any future due process proceeding to testify regarding any information gained during the course of mediation. Statements made at the mediation shall not be used at a due process proceeding.

- (k) If agreement is reached as to issues in dispute between the parties, that agreement shall be in writing and signed by all parties and the mediator. The mediation agreement shall be confidential unless otherwise agreed upon.
- (l) Notwithstanding subsection (k) above:
 - (1) The mediation agreement shall become a part of the child's educational record subject to 34 CFR Part 99, et seq.
 - (2) Where breach of a mediation agreement is the subject of a Vermont Department of Education commissioner complaint, pursuant to Rule 2365.1.5, or a due process hearing, pursuant to Rule 2365.1.6, the mediation agreement may be offered as evidence in that proceeding.

2365.1.5 Administrative Complaints

- (a) Any person or organization alleging that a school district has acted contrary to the requirements of Part B of the IDEA may file a signed written complaint with the Commissioner of Education.
- (b) The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complaint is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.
- (c) The complaint shall contain a description of the nature of the problem that is alleged to constitute a violation of Part B of the IDEA.
- (d) If the complaint cannot be in writing due to special circumstances, the complaint may be filed through other means of communication.
- (e) A copy of the complaint shall be forwarded by the Commissioner to the school district.
- (f) Upon receipt of a complaint, the Commissioner shall appoint a complaint investigator to conduct an investigation.
 - (1) The complaint investigator shall examine evidence presented on behalf of the complainant and on behalf of the school district.

- (2) At the discretion of the complaint investigator, the complaint may be investigated by way of a document review, meeting, hearing, on-site investigation, or any combination thereof.
- (3) If a hearing is scheduled, the complaint investigator shall have the powers and duties set forth below:
 - (i) Conduct pre-hearing conferences;
 - (ii) Conduct any hearings that may be required;
 - (iii) Prepare proposed findings of facts and conclusions of law for a decision by the hearing authority; and
 - (iv) Any other powers and duties set forth in State Board of Education Rule 1236.1
- (4) No later than sixty days after receipt of the complaint, the Commissioner shall issue a written decision. This time limit may be extended only if exceptional circumstances exist with respect to a particular complaint.
- (g) When a complaint investigation determines that there has been a failure to provide appropriate services, the investigation report shall address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child, as well as appropriate future provision of services for all children with disabilities.
- (h) If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the investigation shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limit and procedures described above. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the complainant shall be informed to that effect. A complaint alleging a failure to implement a due process decision may be resolved through an administrative complaint.
- (i) A complaint may also be filed regarding provision of Part C of the IDEA. Investigation of a Part C complaint shall be completed in coordination with the Agency of Human Services, Department of Health, as co-lead agency. A written complaint should be sent to the Director of the Family, Infant, and Toddler Program at P.O. Box 70, Burlington, Vermont 05402.

- (j) In the event that a school district fails to comply with the decision of the Commissioner, the Commissioner may take one or more of the following actions:
 - (1) Withhold federal flow-through monies that are generated under IDEA's formula assistance program.
 - (2) Make alternative arrangements for providing an IEP service and withhold the cost of such service from the state funds otherwise granted the agency.
 - (3) Withhold accreditation or program approval.

2365.1.6 Impartial Due Process Hearing

- (a) A parent or a school district may initiate an impartial due process hearing regarding the identification, evaluation, and placement of the student in a special education program or the provision of a free appropriate public education by writing to the Commissioner. If the request for a hearing cannot be in writing due to special circumstances, such as an inability to communicate in writing, the request for a hearing may be made through other means of communication.
 - (1) Requests for hearings must be made:
 - (i) Within two years of the alleged violation, or
 - (ii) Within two years of the date the alleged violation is or reasonably should have been discovered, and not after, in accordance with 16 V.S.A. § 2957(a).
 - (iii) Notwithstanding (i) and (ii) above, within 90 days of a unilateral special education placement, where the request is for reimbursement of the costs of such placement.
 - (2) Where the parent, legal guardian or surrogate parent has not been given proper notice of special education rights under state and federal law, including notice of the limitations in (a)(1) above, such limitations shall run from the time notice of those rights is properly given.
- (b) The Commissioner may initiate an impartial due process hearing in accordance with 16 V.S.A. §2958(c)(1) to challenge the need for residential placement where the residential placement review team believes that a less restrictive educational placement is both available and appropriate for a child who is eligible for special education services.

- (c) When a due process hearing is initiated, the Department of Education shall inform the parties of the availability of mediation.
- (d) If a parent requests the information or if a due process hearing is initiated, the Department of Education shall inform the parent of any free or low-cost legal and other relevant services available in the area.
- (e) The due process hearing shall be conducted by a hearing officer appointed by the Department of Education.
- (f) If the party requesting a hearing is a parent, the request shall include a notice, which shall remain confidential, to the Department of Education which shall contain the following information:
 - (1) The name and address of the child;
 - (2) The name of the school the child is attending;
 - (3) A description of the nature of the problem complained of relating to the school district's identification, evaluation, educational placement, or services provided or not provided to the child and facts relating to the problem; and
 - (4) The proposed resolution to the extent known and available to the parents.
- (g) A parent's right to a due process hearing may not be denied or delayed for failure to provide the notice in (f) above.
- (h) The Department of Education shall develop and make available a model form that includes the request for information indicated in subsection (f) above, to assist in filing a request for a due process hearing.

2365.1.7 Impartial Hearing Officer

- (a) A hearing may not be conducted by a person who is an employee of the Department of Education or the school district that is involved in the education or care of the child, or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department to serve as a hearing officer.
- (b) The Department shall keep a list of individuals who serve as hearing officers and that list shall contain a statement of the qualifications of each of those persons.

2365.1.8 Timelines and Convenience of Hearings

- (a) The hearing officer shall ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached and that a copy of such is mailed to each of the parties. Except as provided in Rule 4313.12, specific extension of time may be granted by the hearing officer at the request of either party.
- (b) Each hearing shall be conducted at a time and place that is reasonably convenient to the parents and child involved.

2365.1.9 Hearing Rights

- (a) Any party to a due process hearing has the right to:
 - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses and production of relevant documents;
 - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
 - (4) Obtain a written, or at the option of the parents, electronic, verbatim record of a completed hearing ; and
 - (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (b) The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents.
- (c) At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- (d) Parents involved in a hearing may:
 - (1) Have the child who is the subject of the hearing present; and

- (2) Open the hearing to the public.
- (e) The Department of Education, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Special Education Advisory Council and make those findings and decisions available to the public.

2365.1.10 Finality of A Due Process Hearing Decision; Appeal

- (a) The decision of a hearing officer is final unless appealed to a state or federal court of competent jurisdiction.
- (b) Parties have right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction. An appeal from a final administrative decision in a special education due process hearing to a court of competent jurisdiction pursuant to 20 U.S.C. §1415(e) shall be commenced within 90 days from the notice of the final decision, and not after.

2365.1.11 Civil Action

- (a) Any party aggrieved by the findings and decision arising out of a due process hearing has the right to bring a civil action. The action must be commenced within 90 days of the hearing officer's decision in a State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy, and shall be subject to the requirements of 34 C.F.R. sec. 300.512.
- (b) An award of attorneys' fees may be made pursuant to 34 C.F.R. sec. 300.513.

2365.1.12 Child's Status During Proceedings

- (a) Unless placed in an interim alternative educational setting pursuant to Rules 4313.4, 4313.6, 4313.8, and 4313.9, the student shall remain in his or her current placement while waiting for the decision in connection with a due process hearing or appeal, unless the school district and the parents of the student agree to another placement.
- (b) If the due process hearing involves an application for initial enrollment in public school, the student, with the consent of the parents, shall be placed in the public school until the completion of all the proceedings.
- (c) If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the school district and the parents for purposes of paragraph (a), above.

2365.1.13 Transfer of Parental Rights at Age of Majority

- (a) When a student who is eligible for special education services reaches the age of eighteen:
 - (1) The school district shall provide any notice required by these rules to both the student and his or her parents; and
 - (2) All other rights accorded to parents under these regulations transfer to the student.
- (b) When a student who is eligible for special education services reaches the age of eighteen and is incarcerated in a correctional institution, all other rights accorded to the parent transfer to the student and any notice required by these rules shall be provided to the student only.
- (c) When a student has been determined to be incompetent under State law, the guardian or educational surrogate parent shall receive any notice required by these rules.
- (d) Whenever rights are transferred under this rule, the school district shall notify the student and the parents of the transfer of rights.
- (e) Beginning one year before a student reaches the age of 18, the student's IEP must include a statement that the student has been informed of his or her rights under the IDEA, if any, that will transfer to the student on reaching the age of 18.

2365.2 Confidentiality of Information and Student Records

Definitions. For the purposes of Rule 2365.2 through 2365.2.16:

- (a) "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) "Education records" means education records as defined in 34 CFR §99.3.
- (c) "Participating agency" means any agency, school or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.
- (d) "Personally identifiable information" means:

- (1) The name of a child, the child's parent, or other family member;
- (2) The address of the child;
- (3) A personal identifier such as the child's social security number or student number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

2365.2.2 Notice to Parents

- (a) The Vermont Department of Education shall give notice, to the extent required by federal law, that is adequate to fully inform parents about confidentiality requirements of §2365, including:
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

2365.2.3 Access Rights to Records

- (a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the school district under the IDEA. The participating agency shall comply with a request to inspect and review without unnecessary delay and before any meeting regarding an IEP or any administrative complaint, mediation, due process hearing, or

expedited hearing, and in no case more than 45 calendar days after the request has been made.

(b) The right to inspect and review education records includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable Vermont law governing such matters as guardianship, separation, and divorce.

2365.2.4 Record of Access

Each participating agency shall keep a record of parties obtaining access to a child's education records which are collected, maintained, or used under the IDEA, except access by parents and authorized employees of the participating agency. The record shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

2365.2.5 Records on More than One Child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

2365.2.6 List of Types and Locations of Information

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

2365.2.7 Fees

- (a) A participating agency may charge a fee for copies of records made for parents under these provisions, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under these provisions.

2365.2.8 Amendment of Records at Parent's Request

- (a) A parent or eligible student who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the school district that maintains the information to amend the information.
- (b) The participating agency shall decide whether to amend the information as requested within a reasonable period of time of receipt of the request.
- (c) If the participating agency refuses to amend the information as requested, it shall inform the parent or eligible student of the right to a hearing under Rule 2365.2.9.

2365.2.9 Opportunity for A Hearing

The participating agency shall, on request, provide an opportunity for a hearing within the agency where the parent or eligible student may challenge information in education records on the grounds that it is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

2365.2.10 Result of Agency's Hearing

- (a) If, as a result of the participating agency's hearing, the agency finds that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information as requested and so inform the parent in writing.
- (b) If, as a result of the participating agency's hearing, the agency finds that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent or eligible student of the right to

place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district.

- (c) Any explanation placed in the records of the child under this section must:
 - (1) Be maintained by the participating agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
 - (2) Disclose the parent's or eligible student's explanation, if the records of the child or the contested portion are disclosed by the school district to any party.

2365.2.11 Hearing Procedures

A participating agency's hearing under this section shall, at a minimum, meet the following requirements:

- (a) Be held within a reasonable time after the agency received the request for the hearing from the parent or eligible student;
- (b) Give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing;
- (c) Be conducted by an official of the agency or other person appointed by the agency, who does not have a direct interest in the outcome of the hearing;
- (d) Give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised about information in the record. The parent or eligible student may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney;
- (e) A written decision shall be rendered within a reasonable period of time after the hearing; and
- (f) The decision shall be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

2365.2.12 Consent

- (a) Parental consent must be obtained before personally identifiable information is--
 - (1) Disclosed to anyone other than officials of participating agencies collecting or using the information, subject to paragraph (b) and (c) of this section. or

- (2) Used for any purpose other than meeting a requirement of these regulations.
- (b) A participating agency subject to these regulations may not release information from education records to other participating agencies without parental consent, unless specifically authorized to do so by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.
- (c) Disclosure of special education and disciplinary records may be made without the prior written consent of the parent or a student aged 18 or older, if:
 - (1) It is made in compliance with a lawfully issued subpoena or court order, and the school has made reasonable attempts to notify the parent or the student aged 18 or older of the order or subpoena before complying with the request, so he or she may seek protective action from the court, such as limiting the scope of the subpoena or quashing it; and
 - (2) The subpoena or court order mandating disclosure specifies that the existence or the contents of, or the information furnished in response to, such subpoena or court order should not be disclosed by the receiving party; or
 - (3) It is to law enforcement or other appropriate parties, and, if the required information from the educational records is needed in connection with an emergency and knowledge of the information is necessary to protect the health or safety of the student or other individuals.
 - (4) If a parent refuses to give written consent when required for disclosure of personally identifiable information, the responsible school district may seek an order from a due process hearing officer allowing disclosure.

2365.2.13 Safeguards

- (a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) One official in each participating agency shall be identified as responsible for ensuring the confidentiality of any personally identifiable information.
- (c) A participating agency must have policies or procedures to ensure that all persons collecting or using personally identifiable information receive training or instruction regarding Vermont's policies and procedures under this rule and 34 CFR Part 99.

- (d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

2365.2.14 Destruction of Information

- (a) For purposes of an audit, when a participating agency has counted a child to justify receipt of IDEA funds, the district shall retain copies of the child's IEPs and special education eligibility evaluations, for a minimum of five years from the end of the school year in which the document was in effect.
- (b) The participating agency shall inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

2365.2.15 Children's Rights

The Vermont Department of Education's policy shall be to protect the privacy rights of students with disabilities

- (a) When a student's educational records are transmitted, stored, accessed or destroyed, a responsible participating agency shall conform to the standards in the Department's document entitled, "Vermont Policy and Procedures for Education Records."
- (b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR § 99.5(a)), the rights of parents regarding education records transfer to the students at age 18.
- (c) If the rights accorded to parents under these Rules are transferred to a student who reaches the age of majority, consistent with Rule 2364.27, the rights regarding educational records in Rules 2365.3 – 2365.14 must also be transferred to the student. However, the participating agency must provide any notice required under the procedural safeguards provisions of the Individuals with Disabilities Education Act to the student and the parents.

2365.2.16 Disciplinary Information in Student Records

- (a) A participating agency shall include in the records of a child receiving special education services a statement of any current or previous disciplinary action that has

been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children not receiving special education services.

- (b) The statement shall include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.
- (c) If the child transfers from one school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child as consistent with subsection (a) of this section.

2366 State Funding for Special Education

2366.1 Special Education Service Plan

- (a) On or before October 15th of each year, each superintendent shall file a Special Education Service Plan with the Commissioner of Education, as required by 16 V.S.A. §2964.
- (b) The special education service plan shall be submitted in a form and manner prescribed by the Commissioner, and at minimum, shall contain the following:
 - (1) Anticipated programs and services to be provided to students with disabilities which will be made available by the supervisory union/supervisory district;
 - (2) Anticipated extraordinary special education on expenditures in the next fiscal year; and
 - (3) Anticipated total special education expenditures in the next fiscal year for each school district within the supervisory union/supervisory district, as well as the union/district itself.

2366.2 Whether Expenditures are Allowable for State Reimbursement

State financial assistance for special education shall be available under:

- (a) Mainstream Block Grant and matching local funds pursuant to 16 V.S.A. §2961;

- (b) Extraordinary services reimbursement and the matching local funds pursuant to 16 V.S.A. §2962; and
- (c) Special education expenditures reimbursement pursuant to 16 V.S.A. §2963.

Costs are allowable for reimbursement in accordance with the following.

2366.2.1 Instructional Services

Unless otherwise provided by this rule, expenditures for instructional services shall be allowable if required by a student's IEP and shall include:

- (1) Salaries and benefits of licensed special education teachers including vocational special needs teachers, and instructional aides for the time they carry out special education responsibilities as approved by the Commissioner for the current school year and the salaries and benefits of teachers and aides up to the number of core staff established pursuant to the following:
 - (a) The core staff level shall be established by the Commissioner for each school district. The full-time equivalent number of licensed special education teachers and special education program aides employed for providing mainstream special education services during school years 1990-1991 and 1991-1992, shall be utilized to determine each school district's core level staff.
 - (b) For the salaries and benefits of the core staff to qualify as allowable costs, the staff must be providing: special education services; supplementary aids and services pursuant to Section 504 of the Rehabilitation Act; direct services to students in need of classroom support as determined by the Educational Support Team; or consultation services to meet the needs of students eligible for special education services, Section 504 services or educational support services;
- (2) Salaries and benefits for services of individual aides for the portion of time they carry out special education responsibilities;
- (3) Contracted services to provide special education instruction to students with disabilities;
- (4) Student transportation which is required to implement a part of the instructional program for students with disabilities;

- (5) The portion of non-collaborative tuition of special education programs and excess costs charged by public schools which relate to allowable costs;
- (6) The collaborative tuition for special education programs charged by public school districts or supervisory unions;
- (7) Tuition and all reasonable and necessary costs of placement, as defined in Rule 2366.2.6, excluding any regular education tuition in an independent school approved for the purpose of providing special education in accordance with 16 V.S.A. §2958(e) and Rule 2228, et seq.;
- (8) Travel of special education personnel relating to educating students with disabilities as allowed by their local contractual agreement;
- (9) Special textbooks, workbooks, other classroom supplies and other instructional materials for a student with disabilities to the extent required by a student's IEP; and
- (10) The reasonable cost of rental, purchase and maintenance of specialized equipment for a student with disabilities required by the IEP and not otherwise available at no cost to the parent through any other sources.

2366.2.2 Related Services

Expenditures for related services are allowable if:

- (1) They are for services defined as related services in federal and state law;
- (2) The expenditure is for a related service required by the student's IEP, including transportation to and from home for students with disabilities who cannot be accommodated by regular school bus service;
- (3) The expenditure is for services provided by personnel beyond those required by the non-special education School Quality Standards (e.g. counseling, nursing); and
- (4) The expenditure is not reimbursed by another source.

2366.2.3 Special Education Administration

Allowable expenditures for special education administration are as follows:

- (1) Salary and benefits of special education administrators and support staff for time dedicated to administration of the educational program for students with disabilities.

However, if a supervisory union/district elects not to hire a special education administrator and is implementing an alternative organizational plan for the provision of special education administration for a given school year, in order for the cost to be considered an allowable expenditure, the plan must be approved by the Department of Education. The plan shall include a description of the functions and the responsibilities of the staff assigned to special education administration; the time spent on these functions; and the estimated costs to be allocated to special education administration;

- (2) Supplies, office expenses and equipment for special education administration;
- (3) Cost of inservice activities relating to special education up to a maximum amount per year established by the Commissioner;
- (4) Expense of a telephone in a special education classroom; and
- (5) Advertising expenses in an amount not to exceed \$1,000 annually per supervisory union.

2366.2.4 Evaluation Costs

Reasonable and necessary expenditures are allowable for diagnostic medical services, other tests, and associated costs when part of a comprehensive evaluation, re-evaluation, or independent evaluation.

2366.2.5 Costs of Placement in Approved Independent Schools

- (a) Reasonable and necessary costs, excluding regular education tuition, of a placement in an independent school are allowable if either:
 - (1) Approved by the State Board of Education for purposes of providing special education pursuant to Rule 2228;
 - (2) Approved as an exception by the Commissioner pursuant to Rule 2228.2.(2); or
 - (3) Required by a due process hearing order or a court order.
- (b) Costs approved by the State Board of Education at an independent school are only allowable if covered by a written agreement pursuant to Rule 2228.4.2 and at a rate approved under Rule 2222.8.8.

2366.2.6 Unallowable Expenditures

The following are not allowable for reimbursement:

- (1) Attorney's fees and other legal costs;
- (2) Overhead costs including building operations, general administration, and business services except that are part of a collaborative tuition attributable to overhead costs, and then only to the extent that overhead costs do not exceed 20% of the total program costs;
- (3) Funds paid to union schools or supervisory unions by member school districts as assessments for special education;
- (4) Any costs not allowable under Rules 2366.2.1 through 2366.6;
- (5) Any costs for financial accounting and auditing; and
- (6) Technical Education tuition established under 16 V.S.A. §1552(a).

2366.2.7 Transition from Residential Placement

Expenditures for certain transitional services which otherwise would not be reimbursed as allowable costs pursuant to Rule 2366 et seq. may be reimbursed for students who are being returned from residential placement under the following conditions:

- (1) A plan for transitional and educational services shall be submitted to the Commissioner of Education within a reasonable time prior to the change in placement and shall contain a description of the services to be provided and the estimated costs of those services. The contents of the plan shall be consistent with those prescribed by the Commissioner. The plan for transitional services, including estimated costs, must receive approval from the Commissioner in order for reimbursement of the otherwise non-allowable costs to occur.
- (2) The Commissioner's approval of a plan for transitional and educational services shall specify the limit as to the amount that will be reimbursed and the period during which such reimbursement will be made.

2366.2.8 Special Education administration costs shall not be included as a cost of an individual student when reporting and calculating extraordinary special education expenditures.

2366.3 Special Education Expenditures Defined

“Special education expenditures” under 16 V.S.A. §2963 shall mean a sum of money equaling all allowable expenditures for special education as defined under Rule 2366.2 less the following:

- (1) Revenue from federal aid for special education.
- (2) Mainstream service costs, as defined in 16.V.S.A. §2961(c)(1);
- (3) Extraordinary special education expenditures, as defined in 16 V.S.A. §2962;
- (4) Revenue from excess costs and special education tuitions received;
- (5) All other state and federal funds used for special education costs. In this section, the term "other state funds" shall mean any state grant source except mainstream block grant, extraordinary services reimbursement, and special education expenditures reimbursement to which allowable special education expenditures are charged. The other state funds may include, but are not limited to the following:
 - (a) Regional interdisciplinary team grants pursuant to 16 V.S.A. §2967(b)(3),
 - (b) Regional multi-handicapped specialist grants pursuant to 16 V.S.A. § 2967(b)(4),
 - (c) Grants for building effective strategies for teaching students (BEST) pursuant to 16 V.S.A. §2969(c),
 - (d) Training grants pursuant to 16 V.S.A. §2969(d), and
 - (e) School district reimbursement for state-placed students under 16 V.S.A. §2950(a).

2366.4 Each supervisory union/district shall submit a financial report as required by 16 V.S.A. §2968(a) for the supervisory union/district and each member school district that expended funds for special education or received block grant funds. The report shall be completed as prescribed by the Commissioner and signed by the superintendent or a person designated by the superintendent. Pursuant to 16 V.S.A. §2968(b), a late fee of \$100 per business day shall be assessed to each supervisory union/district which does not file a complete final Special Education Expenditure Report for the preceding fiscal year by the deadline established in statute.

2366.4.1 A supervisory union/district may appeal the late fee to the Commissioner of Education. The appeal shall be received within 30 calendar days of the due date of the report. The appeal shall be in writing and include:

- (1) A statement of the reasons why the supervisory union/district was unable to file the complete report by the statutory deadline and
- (2) The action to be taken by the supervisory union/district to ensure that future reports will be completed and filed by the due date.

2366.4.2 The appeal shall only be granted if the report is filed by the time of the appeal.

2366.4.3 The Commissioner shall either grant the appeal of the penalty in whole or in part or deny the appeal in writing within 60 calendar days of the due date of the report. The Commissioner shall not grant an appeal of a late filing fee for the same supervisory union/district for two consecutive fiscal years.

2366.4.4 Any late penalty not forgiven on appeal shall be deducted from any payments due under any funding category covered under Title 16 of the Vermont Statutes Annotated. The penalty incurred by a supervisory union/district shall be divided among its member town(s). The proration of the penalty shall depend on which reporting entities within the supervisory union failed to submit final reports by the due date. If two or more reporting entities failed to meet the deadline, the penalty shall be divided equally among the late reporting entities. The penalty due to late reports from supervisory unions, joint contract districts and union schools shall be divided to the member towns by the same proportion that the total net cost is divided to the member towns. Any penalty attributed to the member towns of a unified union school district shall be assessed against the unified union school district.

2366.5 Corrections Education

With respect to students in the custody of the Department of Corrections, the commissioner of education shall pay for the costs of special education in accordance with the provisions of 28 V.S.A. §120.

2366.6 Collaborative Programs

2366.6.1 Collaborative Program Definition; Tuition

A “collaborative program” is a program created pursuant to an agreement between two or more supervisory unions in accordance with 16 V.S.A. §267, for the purpose of cooperatively providing special education services. A collaborative program may offer one or more component programs (e.g. multi-handicapped, emotionally disturbed, diversified occupations). A collaborative program may charge a tuition pursuant to 16 V.S.A. §826(b).

2366.6.2 Collaborative Program Accounting

The accounting for each collaborative program shall be in accordance with the Handbook for Financial Accounting of Vermont School Systems accounting procedures and:

- (a) An enterprise fund as defined in the Handbook shall be established to account for the funds for each collaborative program;
- (b) Notice of tuition shall be provided by the collaborative program to the appropriate school board(s) as set forth in 16 V.S.A. §826(a);
- (c) Such tuition notice shall include a description of services to be provided, and the amount of the tuition for each component program;
- (d) Tuition shall be proportionally calculated for students who are part-time; and
- (e) Final tuition charged shall be calculated based on the actual cost of the program.

2366.6.3 Non-collaborative Tuition

- (a) A school district or a supervisory union may charge a special education tuition under 16 V.S.A. §826(b) for providing special education services. However, any such bill for tuition shall state the amount of the bill eligible for reimbursement under the state special education funding formula. In the case of a school district, special education tuition shall not be charged for a student whose district of residence is the school district. In the case of a supervisory union, special education tuition shall not be charged for a student from within the supervisory union unless otherwise agreed pursuant to 16 V.S.A. §301.

- (b) All the provisions of Rule 2366.6.2 apply to tuition under subsection (a) above, except that:
 - (1) It is permissible but not required that an enterprise fund be established and
 - (2) The notice of tuition establishes the maximum tuition which can be charged.

2366.6.4 Excess Costs Procedure

Excess costs which may be charged under 16 V.S.A. §826(c) are limited to allowable special education costs for services not covered by a regular education tuition or a special education tuition. Allowable special education costs for this purpose are defined in Rules §2366.2.1, 2366.2.2 and 2366.2.4. The following procedures shall apply to excess costs:

- (a) The district of residence or agency responsible shall be given prior notice by the billing district that an excess cost will be charged;
- (b) Notice shall indicate the student's name, type, frequency of service to be provided, fee for services to be provided, and billing schedule;
- (c) Excess cost shall be calculated based on the actual costs attributable to the student or proportionate costs in accordance with the Handbook for Financial Accounting of Vermont School Systems accounting and cost allocation procedures; and
- (d) Excess costs shall be billed quarterly and final billings for any fiscal year must be submitted to the sending districts prior to June 15th of that fiscal year.

2366.6.5 Allowable Costs Reporting

For financial and statistical reporting to the Commissioner, the cost reported by a school district for all allowable special education services shall be the actual cost of services provided minus the revenue received or due for excess costs.

2366.6.6 (Reserved)

2366.6.7 Allocation of Attorney's Fees

All awards, costs and fees associated with a legal proceeding in which a collaborative program is a party shall be borne by the school district of the student's residence unless otherwise agreed upon by the collaborative's members. However, the foregoing shall

not be construed to mean that a collaborative or school district shall be responsible for the legal fees of a parent unless ordered by a court or agreed to in mediation.

2366.6.8 Schedule of Special Education Payment and Reporting

Payments due under 16 V.S.A. §§2961 through 2963, shall be calculated and distributed pursuant to 16 V.S.A. §2969 as follows during each fiscal year:

- (1) Mainstream Block Grants, pursuant to 16 V.S.A. §2961, shall be distributed on August 15th and December 15th. On each of these dates one-half of the state grant amount shall be forwarded.
- (2) Special Education Expenditures Reimbursement payments shall be made, pursuant to 16 V.S.A. §2969, on the following schedule and in the amounts as indicated below:
 - (a) By August 15th, 15% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan pursuant to 16 V.S.A. §2964.
 - (b) By December 15th, an additional 35% of the estimated reimbursement shall be forwarded. The amount shall be based on the recipient's Service Plan, pursuant to 16 V.S.A. §2964, and adjusted according to the Special Education Expenditure Report, due on November 15th, pursuant to 16 V.S.A. §2968.
 - (c) By April 15th, an additional 40% of the reimbursement shall be forwarded, based on the recipient's Service Plan, pursuant to 16 V.S.A. §2964, and adjusted according to the second Special Education Expenditure Report, due March 15th, pursuant to 16 V.S.A. §2968.
 - (d) After the close of the fiscal year, the final balance of the reimbursement shall be forwarded, based on the recipient's final Special Education Expenditure Report due on August 1st, pursuant to 16 V.S.A. §2968.
- (3) Extraordinary Services Reimbursement, pursuant to 16 V.S.A. §2962, shall be calculated as the amount due based on the recipient's previous Special Education Expenditure Report, pursuant to 16 V.S.A. §2968. Funds may be advanced in June based on estimated reports of extraordinary service costs.

2366.7 Reimbursement for the Costs of Educating State-Placed Children

2366.7.1 "State-placed Student" is defined in 16 V.S.A. §11(a)(28).

2366.7.2 School district reimbursement for special education costs

- (1) For the costs of educating a state placed student, the school district serving the child shall claim and the commissioner shall reimburse the allowable special education costs, other than costs for mainstream services pursuant to 16 V.S.A. §2950(a).
- (2) For the purposes of this section, mainstream services means: learning specialist services, resource room services, speech-language pathology services, and special education administration as defined by Rule 2366.2.3. For the purposes of this section, the following definitions shall apply:
 - (a) "Learning specialist services" means those services provided by a learning specialist or by a consulting teacher and include direct instruction or direct supervision of services provided by an aide, in accordance with the kind and amount of such services specified in the student's IEP.
 - (b) "Resource room services" means those services provided by a Resource Room Teacher of the Handicapped, and include direct instruction in accordance with the kind and amount of such services specified in the student's IEP.
 - (c) "Speech – Language Pathology Services" means those services provided by a Speech – Language Pathologist and include direct instruction or direct supervision of services provided by an aide or Teacher of the Handicapped in accordance with the kind and amount of such services specified in the student's IEP.
- (3) Allowable special education costs for elementary and secondary students are as defined under Rule 2366.2, except that the ineligible portion of a non-collaborative tuition for a special education program is allowable under this section. For EEE children, allowable special education costs are the costs of providing the services specified in the student's IEP. Special education costs funded through federal funds or any grant are not eligible for state-placed student reimbursement.

2366.7.3 Payments for State-Placed Students in Residential Placements and Out-of-State Public Schools.

Payments for state placed students in residential placements and out-of-state public schools shall be in accordance with 16 V.S.A. §2950(a) & (b).

2366.8 State Funding for Essential Early Education

2366.8.1 Essential Early Education programs shall be funded in accordance with 16 V.S.A. §2948(c).

2366.8.2 Essential Early Education Grant Funds

- (a) Each school district shall receive an Essential Early Education grant each year. Grants shall be calculated according to the estimated number of children from 3 through 5 years of age in the school district. The estimated number of children who are 3 through 5 years of age shall be based on the last verified average daily membership of all children enrolled within the district in grades 1 through 3. The Commissioner shall announce the estimated number of children three through five years of age in each school district and the proposed grant allocation amounts by December 15th.
- (b) Essential Early Education grant funds shall be used to provide a free, appropriate, public education to all children within the school district who are three through five years of age and are eligible for special education.
- (c) Once a school district has fulfilled its obligations under subsection (b)(1) of this rule, Essential Early Education grant funds may be used:
 - (1) To provide Early Intervention services under the Family and Infant Toddler Project to any eligible child who is younger than three years of age; or
 - (2) To provide services to children who are younger than six years of age who have been identified as being at risk of school failure.
- (d) Extraordinary services reimbursement will be available for services which are required by an IEP for a child who is 3 through 5 years of age or who will be three years of age before the end of the school year.
- (e) As a condition for receiving Essential Early Education grant funds, a school district shall make reasonable efforts to coordinate services with local public and private agencies that provide services to children of three through five years of age.

2366.9 Residential Placements

2366.9.1 State-Operated Residential Schools and Day Programs

Funding for state-operated residential schools and day programs shall be in accordance with 16 V.S.A. §2948(f).

2366.9.2 Individual Residential Placements

Funding of individual residential placements shall be in accordance with 16 V.S.A. Chapter 101, subchapter 2 and 16 V.S.A. §2958(c)(2). Applications for funding of individual residential placements shall undergo the residential review process set forth in Rule 2958.

2366.9.2.1 Residential Placement Review Team

As needed, the Commissioner may appoint Department of Education employees and others to a residential placement review team. Members of the team shall be subject to the confidentiality provisions of state and federal law. The team shall have those responsibilities set forth in 16 V.S.A. § 2958(b). The team shall be composed of at least two members: (1) one who has knowledge about the child's area of disability and (2) the other who has knowledge of available resources and services in the school district's region of the state.

2366.9.2.2 Notification of the Commissioner

- (a) Each school district shall notify the Commissioner, in writing, with a copy sent to the student's parents, that residential placement is a possible option for inclusion in the student's IEP when there has been:
 - (1) A recommendation by the Evaluation and Planning Team for residential placement;
 - (2) A unilateral residential placement by the parents or by another state agency, pursuant to 16 V.S.A. §2942(7);
 - (3) A recommendation by another state agency for residential placement;
 - (4) An annual review for a student already in residential placement; or
 - (5) When any circumstance warrants consideration by the school district that residential placement is a possible option for inclusion in a student's IEP.

Nothing herein shall be construed to mean that a student who falls within one of the above five categories necessarily requires residential placement. Additionally, nothing herein shall be construed to mean that notice to the Commissioner represents a decision of the IEP participants.

- (b) Reimbursement for residential placements shall be for placements from the date the Department receives the notification in accord with this section. This requirement shall not apply to emergency placements made due to life-threatening events to a child or to other exceptional circumstances approved by the Commissioner or designee after request by a school district and recommendation of the residential review team.

2366.9.2.3 Timelines

Each school district shall notify the Commissioner of its belief that residential placement is a possible option at the time it is considering or reconsidering the placement of a student with disabilities. Such notice shall be given as soon as possible so that the involvement of the review team, if deemed necessary by the Commissioner, does not interfere with the timelines for the placement decision.

2366.9.2.4 Receipt of IEP

After the IEP team has made a determination that a student requires residential placement, the school district shall forward the following documents to the Commissioner within five working days of the IEP's completion:

- (1) The student's most recent Evaluation Plan and Report;
- (2) Current IEP;
- (3) Residential placement application form; and
- (4) Any other relevant information.

2366.9.2.5 Residential Review Team Procedures

- (1) Upon receiving notice under Rule 2366.9.2.2 or the IEP under Rule 2366.9.2.4, or upon request by a parent to establish a residential placement review team to review his or her child's case, the Commissioner may establish a review team. Within ten working days of receipt of the notice, the IEP or the parental request, the

Commissioner or his designee shall notify the school district and the parents whether or not a review team has been constituted or reconvened.

- (2) The review team or any designated member thereof shall investigate the need for residential placement of a student and provide technical assistance to the school district concerning the need for residential placement, alternatives to residential placement, and alternative cost-effective residential facilities.
- (3) Within 30 calendar days of its establishment, the team, after investigation, may take any of the following actions:
 - (a) Advise the school district and parents on alternatives to residential placement;
 - (b) Review the individualized education program calling for residential placement of a student to consider whether the student can be educated in a less restrictive environment;
 - (c) Assist the school district in locating cost effective and appropriate residential facilities where necessary;
 - (d) Request, but not require, a new individualized education program when it believes that appropriate alternatives to residential placement are available; or
 - (e) Offer mediation as a means of resolving disputes relating to the need for residential placement, the particular residential facility recommended for a student with a disability or the associated costs.
- (4) The Commissioner may waive any provision of Rule 2366.9.2.5, not otherwise inconsistent with law for emergency placements or administrative efficiency.
- (5) Where the team or its designee finds that the placement practices or policies of a school district are substantially inconsistent with least restrictive environment provisions of state or federal law, it may require the agency to submit a plan of correction.
- (6) Where the team or its designee recommends and the Commissioner finds that a residential placement has been effectuated which is substantially more costly than available, appropriate, alternative residential facilities, the amount of reimbursement shall be calculated using the less costly placement. In such an instance, the school district may appeal the decision of the Commissioner to the State Board of Education in accordance with Rule 1230.

2366.9.2.6 Due Process Hearing

When the residential review team recommends that a student does not require residential placement, the Commissioner may initiate a special education due process hearing under Rule 2365.1.6 to determine the appropriate placement for the child.

2366.10 Local Educational Agency Plan (LEAP)

Each supervisory union, which receives IDEA-B federal funds, shall submit a local education agency plan as required by the Vermont Department of Education.

2366.11 Assisting School Districts With Special Education Expenditures Of An Unusual Or Unexpected Nature

2366.11.1 Authorization

In fiscal years 2002 through 2004, the commissioner may use up to two percent of the funds appropriated for allowable special education expenditures as defined in these rules for the purpose of assisting town, unified union, and incorporated school districts with special education expenditures of an unusual or unexpected nature.

2366.11.2 Definitions

For the purposes of this rule, the phrase, "school district," means a town, unified union, or incorporated school district.

2366.11.3 Eligibility For Assistance

Ninety percent of funds identified for distribution under this rule shall be made available to school districts that meet the eligibility criteria set forth in subsections (a) through (c) below. Ten percent of funds identified for distribution under this rule shall be made available to school districts that meet the eligibility criteria set forth in subsection (d) below.

- (a) A school district shall not be eligible for assistance under this rule if assistance would otherwise be available under 16 V.S.A. §2963a.
- (b) In order for a school district to be eligible for assistance under this rule, it shall have submitted, during at least two of the previous four quarters of the prior fiscal year, Medicaid bills for reimbursement for at least 85 percent of its Medicaid eligible students who received medically-related special education services. The commissioner may make an exception with respect to this requirement where a

school district made reasonable efforts to comply therewith but was prevented from doing so due to extraordinary circumstances.

- (c) Expenditures may be considered unusual or unexpected and therefore eligible for reimbursement under this rule where:
 - (1) They were otherwise allowable under 16 V.S.A. §2963,
 - (2) They were not reasonably anticipated at the time of school district budget development and not included in the adopted or passed school district budget as filed with the commissioner. For the purposes of this rule, a budget "adopted or passed" includes any assessments paid to a supervisory union or union school district for special education services provided,
 - (3) They resulted in a net increase in special education expenditures over and above any offsetting decreases in expenditures or increases in revenue,
 - (4) They resulted in at least a 20% increase from the previous year in the school district's special education eligible costs per average daily membership, as that term is defined in 16 V.S.A. §4001(1), and
 - (5) The supervisory union of which the school district is a member has expended at least 98 percent of funds made available to it under the IDEA.
- (d) For the purposes of distributing ten percent of the funds identified as available for distribution under this rule, a school district's expenditures may be considered unusual or unexpected where the requirements set forth in subsections (a) and (b) above, as well as in subdivisions (c)(1), (3) and (5) above, are met, and the expenditures are determined by the commissioner to be unusual expenditures because they result from the enrollment of high numbers of students with low incidence disabilities, high concentrations of students with disabilities in particular grades, or other significantly statistically anomalous circumstances.

2366.11.4 Procedures To Apply For Assistance

- (a) A school district shall make application for assistance under this rule by completing an application form prescribed by the commissioner and distributed annually.
- (b) The completed application shall be submitted to the commissioner no later than August 1. The reimbursement requested shall be in reference to special education expenditures made in the previous fiscal year.

- (c) The commissioner shall determine the eligibility of a school district for assistance under this rule by September 1.
- (d) The decision of the commissioner as to eligibility for assistance and the amount of such assistance received shall be final.
- (e) A school district which has failed to complete and submit an application to the commissioner by August 1 for assistance with respect to unusual or unexpected special education expenditures in the previous fiscal year shall not be permitted to include such expenditures in an application for assistance under this rule in any subsequent fiscal years.

2366.11.5 Amount Of Assistance

- (a) By December 15th of 2001 and every year thereafter, the commissioner shall announce the maximum amount available for assistance under this rule.
- (b) The commissioner shall review a school district's application for assistance under this rule to determine whether a school district's expenditures are eligible under Rule 2366.11.3(c) or (d) for reimbursement and, if so, how much. With respect to expenditures eligible under Rule 2366.11.3(c), the amount of reimbursement shall be calculated as 90% of eligible expenditures made. With respect to expenditures eligible under Rule 2366.11.3(d), the amount of reimbursement shall be determined by the commissioner on a case-by-case basis taking into consideration the amount of funds available, the nature and degree of the anomalous circumstances, and the efforts the district has made to provide appropriate services to the students while keeping costs at a reasonable level. Reimbursement for expenditures under this subsection shall be in lieu of, rather than in addition to, reimbursement under 16 V.S.A. §2963.
- (c) If the amount of funds available for assistance under this rule is insufficient to permit each eligible school district to receive full reimbursement in accordance with subsection (b) of this rule, the amount of assistance shall be pro rated accordingly.

2366.11.6 Payment

Payment of assistance under this rule shall be made in the final payment issued to the school district for the previous fiscal year pursuant to 16 V.S.A. §2969(a).

2367 (Reserved)

2368 Children with Disabilities Enrolled by their Parents in Independent Schools and in Home Study

2368.1 Independent School Placements

As used in Rules 2368.1.1 – 2368.1.13, “independent school children with disabilities” means children who are eligible for special education who are enrolled by their parents in recognized or approved independent schools including religious schools. This section does not apply to children who are placed in independent schools by school districts pursuant to IEPs or to students who attend independent schools pursuant to Rule 2368.3(b)(2).

2368.1.1 Child-Find

Each school district shall locate, identify, and evaluate all independent school children with disabilities residing in that school district. Each school district shall consult with representatives of independent schools and parents of children with disabilities residing in the district on how to go about child-find in a mode that is comparable to activities undertaken with respect to child-find for children in public schools.

2368.1.2 Child-Count

Each school district shall consult with representatives of independent school children residing in the district to determine how to conduct an annual count of the number of independent school children with disabilities. The child-count shall include all children eligible to receive special education services if they attended public school.

2368.1.3 Minimum Expenditures

Each school district shall determine the proportion of independently placed school children with disabilities in the district compared to the district’s total special education child count. In the next subsequent fiscal year, the district shall apply this proportion to its IDEA allocations for children aged 3-21 and children aged 3-5 and use at least those amounts of IDEA Part B funds to provide special education services to independent school children. Expenditures for child-find, including individual evaluations, are the responsibility of the public school and may not be considered in determining whether a school district has met its responsibility to spend the minimum amount.

2368.1.4 No Right to FAPE for Children with Disabilities Placed by Their Parents at Independent Schools

No parentally-placed child shall be deemed to have an entitlement to a FAPE in an independent school. Where services are provided by a school district, they shall be provided at the discretion of the school district. The school district shall offer to make a FAPE available in the event the child is placed in public school. Additionally, the school district shall be prepared to develop an IEP for such child if he or she re-enrolls in public school.

2368.1.5 Services Determined

- (a) Prior to making any decision that affects services for independent school children with disabilities, a school district shall consult with representatives of independent schools where resident children attend with respect to—
 - (1) Which children will receive services;
 - (2) What, how and where services will be provided; and
 - (3) How the provided services will be evaluated.
- (b) The consultation shall give appropriate representatives of the independent schools referenced in subsection (a), above a genuine opportunity to express their views about how services will be provided, where and to whom.
- (c) The school district shall make the final decisions with respect to the services to be provided to eligible children placed in independent schools by their parents.

2368.1.6 Services Plan

If services are to be provided by a school district to a child enrolled unilaterally by his or her parent in an independent school, the school district shall develop a services plan that describes the specific special education and related services to be provided. With respect to the services to be provided, the services plan must be developed, reviewed and revised consistent with the requirements for IEPs in Rules 2363 – 2363.10.

2368.1.7 Location of Services; Transportation

Services may, but need not, be provided at a child's independent school. When special education services are provided pursuant to a services plan, and transportation is necessary for the child to benefit from the offered services:

- (a) Transportation shall be provided by the school district between the child's school or home and the site where services will be provided.
- (b) When the timing of services require it, transportation must be provided from the service site or independent school to the child's home, depending on the timing of the services.
- (c) A school district shall not be required to provide transportation from a child's home to an independent school.
- (d) The cost of transportation may be included in the amount the school district must spend on services for children in independent schools.

2368.1.8 Separate Classes Prohibited

A school district may not use IDEA or state special education funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

- (a) The classes are at the same site; and
- (b) The classes include students enrolled in public schools and students enrolled in independent schools.

2368.1.9 Funds May Not Benefit an Independent School

While a school district may use funds to provide special education and related services to students enrolled in independent schools, it may not use its funds to finance the existing level of instruction in an independent school or to otherwise benefit the independent school.

2368.1.10 Use of Public and Independent School Personnel to Provide Services

- (a) A school district may use IDEA funds to make public school personnel available in other than public facilities
 - (1) To the extent necessary to provide services pursuant to these Rules for independent school children with disabilities; and
 - (2) If those services are not normally provided by the independent school.
- (b) A school district may use IDEA funds to pay for the services of an employee of an independent school to provide services to independent school children placed by parents pursuant to these Rules if--

- (1) The services are performed outside the employees' regular hours of duty;
- (2) The services are performed under the supervision and control of the public school; and
- (c) The employee performing the services meets the same standards as personnel providing those services in the public school.

2368.1.11 Property, Equipment and Supplies Used for the Benefit of Independent School Children

- (a) A school district shall keep title to and exercise continuing administrative control with respect to property, equipment and supplies that are to be used for the benefit of independent school children with disabilities.
- (b) Equipment and supplies may be placed in an independent school for the period of time needed to provide services to such children, and may be used only for the purpose of providing such services. Equipment and supplies shall be removed from the independent school when:
 - (1) They are no longer needed, or
 - (2) Removal is necessary to avoid unauthorized use of equipment and supplies that are to be used for the benefit of independent school children with disabilities.
- (c) No IDEA or state special education funds may be used for repairs, minor remodeling, or construction of independent school facilities.

2368.1.12 Complaints

Independent school children with disabilities have the right to a due process hearing only for the purpose of pursuing complaints that a school district has failed to meet its responsibilities with regard to child-find, including following procedures for evaluation and determination of eligibility. All other complaints may be pursued by way of the State Department of Education's administrative complaint procedure.

2368.1.13 Placement of Children by Parents if FAPE is at Issue

- (a) School districts are not required to pay for the cost of education, including special education and related services, of a child eligible for special education at an independent school or facility, or a home schooling program, if the school district

has offered to make a FAPE available to the child and the parents elected to place the child in an independent school or facility or a home schooling program.

- (b) Disagreements between a parent and a school district regarding the FAPE for the child, and the question of financial responsibility, are subject to dispute resolution procedures set forth in Rules 2365.1.1 through 2365.1.12.
- (c) If the parents of a child eligible for special education enroll the child in an independent preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment, if the court or hearing officer finds that the school district had not made a FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the school district.
- (d) The cost of reimbursement described in paragraph (c) of this section may be reduced or denied—
 - (1) If—
 - (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide a FAPE to their child, including stating their concerns and their intent to enroll their child in an independent school at public expense; or
 - (ii) At least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in paragraph (d)(1)(i) of this section;
 - (2) If, prior to the parents' removal of the child from the public school, the school district informed the parents, through a notice, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
 - (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if—

- (1) The parent is illiterate or cannot write in English;
- (2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child;
- (3) The school prevented the parent from providing the notice; or
- (4) The parents had not received notice of the notice requirement in paragraph (d)(1) of this section.

2368.2 Home Study Placements

Students who have been determined to be eligible to receive special education and related services and who are enrolled with the State Department of Education in programs of home schooling, pursuant to 16 V.S.A. §166b, may receive services pursuant to a services plan to the same extent as children with disabilities enrolled by their parents in independent schools. Representatives of home study students with disabilities shall be consulted with respect to child-find, child-count, special education evaluations, and provision of services in the same way as are representatives of independent schools.

2368.3 School Districts without a Public School

A school district that does not maintain a public school or has not designated, in accordance with applicable law, an approved independent school at the grade level needed by a resident student eligible for special education, shall provide the student a free appropriate public education. All special education evaluations, planning and due process procedures, as required by these rules and by federal law, shall be made available to students who are referred for a special education evaluation or who are eligible for special education and to their parents. The location for IEP services shall be determined in the following manner:

- (a) The choice of a specific school(s) appropriate to fulfill the IEP, including the requirements to educate the student in the least restrictive environment, shall be determined by a student's IEP team after the IEP is developed. If the IEP team does not reach consensus about the location of services, the LEA Representative shall determine the location of services. This shall be communicated to the parents within five working days of this determination.

- (b) If the parents choose to have their child served, pursuant to his or her IEP, at a school other than that selected by the IEP team or by the LEA Representative, and the IEP team agrees that the IEP can be adequately implemented at the school chosen by the parents, the following shall be applicable:
 - (1) Public School – If the parents select a public school, the district shall pay any special education tuition or excess costs allowed by law.
 - (2) Independent School—
 - (i) If the parents select an independent school approved for special education purposes that is generally attended by regular education students that a non-special education student from the school district could choose to attend, the district shall fund the actual costs associated with the parents' placement minus any costs that would accrue to the parents of a non-special education student placed at the same school.
 - (ii) If the parents select an independent school not generally attended by regular education students, the district shall pay the actual educational costs associated with the parents' placement to the amount that would have been spent on the school chosen by the IEP team provided the school selected by the parents is approved for special education purposes.

2369 Educational Surrogate Parents

- (a) To insure that the educational rights of an infant, toddler, or student are protected, an educational surrogate parent shall be assigned whenever the individual is eligible for special education or is being evaluated for special education eligibility, and one of the following applies:
 - (1) The parents of the student are not known after reasonable efforts to locate them or are unavailable;
 - (2) The student is in the custody of the Commissioner of Social and Rehabilitation Services; or
 - (3) The student is 18 through 21 years of age and guardianship authority to make educational decisions on behalf of the student has been granted by a court to a

Commissioner within the Agency of Human Services pursuant to Chapter 215 of Title 18.

- (b) The Commissioner of Education or a designee shall assign an individual to act as an educational surrogate parent. The Commissioner's appointment shall be in accord with 34 C.F.R. § 300.515. The educational surrogate parent may represent the child in all matters relating to:
 - (1) The identification, evaluation, and educational placements of the child; and
 - (2) The provision of FAPE to the child.
- (c) Before making the appointment, the Commissioner or designee shall assure that the person appointed as an educational surrogate parent:
 - (1) Has no personal or professional interest that conflicts with the interests of the student to whom he or she is assigned;
 - (2) Has knowledge and skills that ensure adequate representation of the child; and
 - (3) Is not an employee of the State Department of Education, the child's school district, or any other agency that is involved in the education or care of the child.
- (d) A foster parent shall not automatically have the rights of a parent, but may be appointed by the Commissioner of Education or his or her designee to serve as an educational surrogate parent for the child, pursuant to subsections (a) – (c), above.

4313 Discipline Procedures for Students Eligible for Special Education Services

In addition to the general disciplinary procedures found within Rule 4300, the following procedures apply to children eligible for special education services:

4313.1 Authority of School Personnel to Order Short-term Removals

Except as set forth in Rules 4313.5(a), 4313.8 and 4313.9, or as otherwise provided by law:

- (a) To the extent a removal would be applied to a child who was not eligible for special education services, an eligible child may be removed from the educational setting by the school principal with the agreement of the special education administrator (who can be the case manager) for not more than ten consecutive school days for any violation of school rules.

- (b) During the same school year, additional removals of not more than ten consecutive school days each may be ordered for separate incidents of misconduct, so long as those removals do not constitute a change of placement, as defined in Rule 4313.2.

4313.2 Change of Placement

For purposes of Rules 4313.1 to 4313.13—

- (a) A “change of placement” occurs if a child’s removal from his or her current educational placement for disciplinary reasons is for more than ten consecutive school days.
- (b) A “change of placement” also occurs if the child is subjected to a series of removals that:
 - (1) Add up to more than ten school days in a school year, and
 - (2) Constitute a pattern based upon such factors as:
 - (i) The length of each removal, the total amount of time the child is removed;
 - (ii) The proximity of the removals to one another; and
 - (iii) The reasons for the removals.
 - (3) The determination as to whether a change of placement has occurred shall be made by the school principal with the agreement of the school district’s/supervisory union’s Director of Special Education. Where no such agreement is reached, a change of placement shall be deemed to have occurred.

4313.3 Functional Behavioral Assessments and Behavioral Intervention Plans

- (a) Not later than ten business days after first removing the child for more than ten school days in a school year or commencing a removal that constitutes a change of placement, an IEP meeting shall be convened to develop an assessment plan. An assessment plan need not be developed if, prior to the behavior that resulted in the removal, the school district had conducted a functional behavioral assessment and implemented a behavioral intervention plan. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation, as necessary, to address the behavior.
- (b) As soon as is practical after developing the assessment plan, and completing any assessments required by the plan, the school district shall convene an IEP meeting

to develop and implement appropriate behavioral interventions to address that behavior.

- (c) If, subsequently, an eligible child who has a behavioral intervention plan and who has been removed from his or her current educational placement for more than ten school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

4313.4 Manifestation Determination Review

- (a) If a change of placement or placement in an interim alternative educational setting (IAES) is contemplated, the child's parents shall be notified of that decision on the day it is made and shall be provided with a procedural safeguard notice, as described in Rule 2365.1.2. As soon as possible, but no later than ten school days after the decision is made, a review must be conducted of the relationship between the child's disability and the behavior that is the subject of the disciplinary action. This review shall be conducted at a meeting of the student's IEP team and other qualified personnel.
- (b) In conducting a manifestation determination review, the IEP team shall consider all relevant information, such as evaluation and diagnostic results, including: (1) the results or other relevant information supplied by the parents of the child; (2) observations of the child; and (3) the child's IEP and placement.
- (c) The child's behavior shall be considered to be a manifestation of his disability unless it is determined that:
 - (1) In relationship to the child's behavior that is the subject of the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavioral intervention strategies were provided consistent with the child's IEP and placement;
 - (2) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior that is the subject of the disciplinary action; and
 - (3) The child's disability did not impair the child's ability to control that behavior.

- (d) If, during the manifestation determination review, it is determined that there are deficiencies in the child's IEP or placement, immediate steps must be taken to remedy those deficiencies.
- (e) The manifestation determination review may occur at the same IEP meeting where the functional behavioral assessment or the behavioral intervention plan is considered.

4313.5 Determination that Behavior Was Not A Manifestation of Disability

If it is determined that the child's behavior was not a manifestation of his or her disability:

- (a) The child may be disciplined in the same manner as would children without disabilities.
- (b) The special education and disciplinary records of the child shall be transmitted to the person or persons making the final determination regarding the disciplinary action.
- (c) The IEP team shall determine and the school district provide educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

4313.6 Determination that Behavior Was A Manifestation of Disability

If it is determined that the child's behavior was a manifestation of his or her disability, the school district must:

- (a) Remedy any deficiencies found in the child's IEP or placement or their implementation;
- (b) Consider the appropriateness of continued placement in the IAES, if that is where the child was placed pending the results of the manifestation determination review described in Rule 4313.4; and
- (c) Not implement a change in placement as a disciplinary action unless section (b) above applies.

4313.7 Parent Appeal of Non-Manifestation Determination Decision

- (a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of a disability, the parent may request a due process hearing, in which case an expedited hearing, conducted by an impartial hearing officer in accord with Rule 2365.1.7, shall be arranged to take up the matter.
- (b) In reviewing a manifestation determination, the burden of proof is on the school district to demonstrate that the child's behavior was not a manifestation of the child's disability.

4313.8 Authority of Hearing Officer to Order IAES Placement

A hearing officer may order a change in the placement of a child eligible for special education to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:

- (a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
- (b) Considers the appropriateness of the child's current placement;
- (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- (d) Determines that the IAES that is proposed by school personnel, who have consulted with the child's special education teacher, will enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to, and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior.

4313.9 Removals for Weapons or Drugs

This rule applies to eligible children who (1) possess or carry a weapon at school or a school function; or (2) knowingly possess or use drugs, not including alcohol or tobacco products, or sell or solicit the sale of a controlled substance while at school or a school function. In those situations, school personnel may make a change of placement by putting the child in an IAES for not more than 45 calendar days, if a child without a

disability would be subject to discipline for the same amount of time. The IAES must be determined by the IEP team and be selected to enable the child to continue to progress in the general curriculum. While in the IAES, the child must receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. The services provided to, and modifications made for, the child in the IAES shall be designed to address and prevent the child's offending behavior. For purposes of this rule,

- (a) "Weapon" means a "dangerous weapon", as defined by 18 USC section 930(g)(2), which is "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length."
- (b) "Controlled substance" means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Federal Controlled Substances, Act (21 USC section 812(c)).
- (c) "Illegal drug" means a controlled substance but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substance Act or under any other provision of Federal law.

4313.10 Parent Appeal of School District Placement Decision

- (a) If the child's parent disagrees with a decision regarding a school district's placement made under these disciplinary procedures, including removal to an IAES, the parent may request a due process hearing, in which case an expedited hearing shall be arranged to take up the matter.
- (b) In reviewing a decision of the school district to place the child in an IAES, the hearing officer shall apply the standards in Rule 4313.8 above.

4313.11 Placement during Discipline Appeals

- (a) If a parent requests a due process hearing to challenge an IAES placement or a manifestation determination, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of 45 calendar days from the time the placement was made, whichever occurs first, unless the parent and the school district agree otherwise.
- (b) If a child is placed in an IAES and the school district proposes to change the child's placement after expiration of the IAES, during the pendency of any proceeding to

challenge the proposed change in placement, the child shall remain in the placement immediately prior to the IAES except as provided in section (c) below.

- (c) If the school district determines that it is dangerous for the child to be in the placement immediately prior to the IAES, it may request an expedited due process hearing. At that hearing, the hearing officer shall apply the standards detailed in Rule 4313.8 above to determine whether the child should remain in the IAES for up to another 45 calendar days or be put in another appropriate placement. This procedure may be repeated as often as necessary for the safety of the child or others.

4313.12 Decisions Resulting from Expedited Due Process Hearings

Except as stated in this section, all procedures set forth in Rules 2365.1.6 – 2365.1.9 shall apply to expedited due process hearings brought pursuant to Rules 4313.7, 4313.8, 4313.10 and 4313.11. In all cases, written decisions from expedited due process hearings shall be mailed to the parties within 45 calendar days of the Department of Education's receipt of the request for the hearings. No exceptions or extensions shall be permitted. A decision in an expedited due process hearing is appealable to any Vermont court of competent jurisdiction or the United States District Court for the District of Vermont.

4313.13 Educational Services During Removals

After an eligible child has been removed for more than ten cumulative school days in the same school year, the school district shall provide that child with educational services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP, if the removals follow a determination under Rule 4313.4 that the conduct was not a manifestation of the child's disability. School personnel shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP if the removals are pursuant to Rule 4313.1.

4313.14 Protections for Children Not Yet Eligible for Special Education Services

- (a) A child who has not been determined to be eligible for special education services who has engaged in behavior that makes him or her subject to disciplinary action

may assert any of the protections detailed in Rule 4313 if it can be shown that the school district had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred.

- (b) For purposes of this section, a school district is deemed to have “had knowledge that the child was eligible for special education services before the behavior that precipitated the disciplinary action occurred” if:
 - (1) The child's parent had expressed concern that the child was in need of special education services. The concern must be in writing unless the parent does not know how to write or has a disability that prevented a written statement;
 - (2) The behavior or performance of the child demonstrates the need for special education services pursuant to Rule 2362;
 - (3) The parent has requested a special education evaluation of the child; or
 - (4) The child's teacher or other personnel of the school district has expressed concern about the child to the director of special education of the school district or to other personnel in accordance with the school district's child-find or special education referral system.
- (c) A school district would not be deemed to have knowledge under the prior provision if, as a result of receiving information specified in that provision, it conducted an evaluation and determined that the child was not eligible for special education services, or it had been determined that an evaluation was not necessary and provided proper notice of the determination to the parents.
- (d) If the school district did not have prior knowledge that the child was eligible for special education services, the child may be disciplined in the same manner as would children without disabilities. If a request for an evaluation is made during the time the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. Until the evaluation is completed, the child shall remain in the educational setting determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, services shall be provided in accordance with these Rules.

4313.15 Referral to and Action by Law Enforcement and Judicial Authorities

Nothing in these Rules prohibits a school district from reporting a crime suspected of having been committed by a child eligible for special education services. Disclosure of special education records may be made to law enforcement and judicial authorities only as permitted by Rule 2365.2.12.

BEGINNING OF THE SECTION OF OTHER PERTINENT REGULATIONS
FROM THE
VERMONT STATE BOARD OF EDUCATION MANUAL OF RULES AND PRACTICES

1251 Reasonable Accommodations

When a student with disabilities is not eligible for special education, but is determined to have a disability, accommodations shall be made as needed in such areas as adaptations, including behavior management interventions, and supplemental aids and services. Other regulations contained in Section 2360 et seq. shall not apply to these students. See Rule 2362.2.6.

1252 Instruction for Homebound and Hospitalized Students

- (1) Pupils are eligible for instruction at home or in the hospital whenever they are unable to attend school for a period of ten consecutive school days or more because of pregnancy or a medical disability.
- (2) Homebound or hospitalized elementary pupils shall receive instruction for no less than an average of six hours per week unless inconsistent with medical recommendations. Homebound or hospitalized secondary pupils shall receive instruction for no less than average of two hours per subject per week unless inconsistent with medical recommendations. Instructional materials shall be provided by the district of attendance.

1253 Hearings Under Section 504

Conflicts and alleged violations under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 may be resolved through due process hearings in the same manner as for a special education due process hearing under Rule 2365.1.6. All the procedures for such a due process hearing according to Rule 2365.1.6, including the time limits of 16 VSA §2957, apply to Section 504 hearings. The hearing officer may award declaratory and injunctive relief but not damages, costs or attorney's fees. In addition to, or in lieu of a due process hearing, a person may file a complaint with the Office of Civil Rights in Boston, MA.

2120.8.2.1(c) Multi-year Plans

A Multi-year Plan is an individual plan for students with limiting disabilities that leads to completion of the graduation requirements. This plan shall include a component

explaining any exception to the graduation requirements and alternative requirements designed for the pupil. A description of the process follows.

A request for Multi-year Plans may be made by students, parents, teachers, and guidance personnel, or school administrators.

For students who are eligible for special education, a Multi-year Plan shall be considered at a student's Individual Education Plan (IEP) meeting beginning with the IEP meeting to plan services for the year in which the student turns 14 years old. The participants at the IEP meeting shall develop a Multi-year Plan if they determine that it is necessary in order for the student to graduate. The student's superintendent or his or her designee shall review and approve or disapprove all Multi-year Plans. Any changes to a Multi-year Plan shall be submitted by the IEP participants.

When approved, completion of the Multi-year Plan shall be stated as one of the goals in the student's IEP.

Upon successful completion of an approved Multi-year Plan for graduation, a diploma shall be awarded to the student.

2194 Educational Support System

- (1) It is the policy of the State that each local school district develop and maintain, in consultation with parents, a comprehensive system of education that will result, to the extent appropriate, in all students succeeding in the general education environment. Each public school board in Vermont shall adopt a policy that establishes an educational support system.
- (2) Each public school shall develop written procedures to establish and implement the educational support system. The procedures shall describe:
 - (a) The composition and function of the educational support team; and
 - (b) A process for timely referral for evaluation for special education eligibility, when warranted. The educational support system shall not be a substitute for the special education process and shall not interfere with a student's right to a timely referral for an evaluation for special education eligibility at any time prior to or during the conduct of educational support activities.
- (3) On an annual basis, the school district shall provide to all parents of students enrolled in the district's schools, information regarding the existence, purpose

and function of the educational support system including the educational support team.

2194.1 Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for children who require additional assistance in order to succeed in the general education environment.

2194.2 The educational support system shall, at a minimum, include an educational support team and a range of support and remedial services, including instructional and behavioral interventions and accommodations.

(a) The educational support system shall:

- (1) Be integrated to the extent appropriate with the general education curriculum.
- (2) Be designed to increase the ability of the general education system to meet the needs of all students. To accomplish this, the school district shall provide training to school district personnel, as needed, in such areas as instructional and behavioral interventions, accommodations, and instructional resources.
- (3) Be designed to provide students the support needed regardless of eligibility for categorical programs.
- (4) Provide clear procedures and methods for handling a student who disrupts a class and shall include provision of educational options, support services and consultation or training for staff where appropriate. Procedures may include provision for removal of the student from the classroom for as long as appropriate, consistent with state and federal law.
- (5) Ensure collaboration with families, community supports and the system of health and human services.

School districts are encouraged:

- a) To maintain effective communication with the parents of students who receive assistance through an educational support team; and

- b) To inform parents when a significant change is made in their child's educational program as a result of a recommendation from an educational support team.
- (b) Each educational support system shall include an educational support team which shall:
 - (1) Insure a timely referral for evaluation for special education eligibility or a 504 determination, when warranted.
 - (2) Be composed of staff from a variety of teaching and support services positions.
 - (3) Screen referrals to determine what classroom accommodations and remedial services have been tried.
 - (4) Assist teachers in planning and providing services and accommodations to students in need of classroom supports.
 - (5) Maintain a written record of its actions. Written records of the educational support team will be subject to Rule 2193, applicable state and federal laws including the Federal Family Educational Rights and Privacy Act of 1974 (FERPA) (P.L.95-380), as amended, and its implementing regulations contained at 34 C.F.R. part 99.
- (c) No individual entitlement or private right of action is created by this section.

2195 Grant Applications for Inservice Training Funds

- (1) On April 15th of each fiscal year through fiscal year 1995, the Commissioner shall solicit applications for in-service training funds for the training of teachers and administrators in the identification and evaluation, and provision of educational services to students who require classroom supports.
- (2) Applications must be filed by May 15th on a form prescribed by the Commissioner.
- (3) In distributing these in-service training funds, preference will be given to those districts which demonstrate the greatest need. The following factors may be considered in determining greatest need:

- (a) The percentage of students in special education;
- (b) The percentage of students receiving special education outside of the regular classroom environment;
- (c) The degree of the school restructuring activities being proposed;
- (d) The extent to which the proposed training will result in lasting change to the school system;
- (e) The unique training requirements based on staff turnover, staff shortages or the training needs of the staff; and
- (f) A high student to staff ratio.

2224.2 Tuition for Independent Schools

Tuition shall not be paid from public funds to any independent elementary or secondary school in Vermont for any Vermont student who has been determined eligible for special education unless:

- (a) The school is approved for special education purposes pursuant to Rule 2228 et seq.; or
- (b) There is an order from a court or from a due process hearing pursuant to Rule 2364.3.5 requiring such payment.

2228 Special Education Approval of Independent Schools

2228.1 (1) In order for an in-state independent school to receive approval for purposes of Rules 2224.2 and 2228.2 and 16 V.S.A. 2958(e), it must obtain general independent school approval pursuant to Rule 2200, and also receive approval for special education purposes from the State Board of Education after a determination that its staff, programs and facilities meet state and federal special education standards.

(2) Limitation of Special Education Approval.

Each special education approval may be limited to one or more categories of disability, as defined in Rule 2362.1, according to the services the school provides.

(3) Out-of-State Programs.

Unless otherwise determined by the Vermont State Board of Education, in order for an out-of-state independent school to be approved for special education purposes by the Vermont State Board of Education, it must be approved by the host state for the purpose of providing special education and related services to children with disabilities within that state. Any limitation by the host state on an independent school's special education approval, such as by category of disability served, or other comparable standard, shall also apply to the school's special education approval in Vermont.

2228.2 (1) Placement Prohibition.

No responsible agency, as defined by Rule 2360.2, shall make a special education placement in an independent school that has not been approved for special education purposes unless the placement is pursuant to:

- (a) Subsection (2) of this rule,
- (b) A court order, or
- (c) A due process order pursuant to Rule 2364.3.5.

Nor shall such a placement be made in an independent school that serves special education students who are in a category of disability different from that under which the student was determined to be eligible for special education.

(2) Exceptional Circumstances - Approval Process

Upon application by a responsible agency, the Commissioner may permit, in exceptional circumstances, a special education placement in an independent school that is approved pursuant to Rule 2200, but has not received approval for special education purposes pursuant to Rule 2228.1. Rule 2366.2.2(7) notwithstanding, in instances in which the Commissioner grants such approval, tuition and associated otherwise allowable costs shall be reimbursable under subchapter 2 of Chapter 101 of Title 16 of the Vermont Statutes Annotated. Any person aggrieved by the Commissioner's decision may file an appeal with the State Board of Education pursuant to 16 V.S.A. §828.

- (a) Exceptional circumstances exist when:
 - (i) After reasonable efforts, the LEA cannot locate an appropriate public or independent school approved for special education purposes pursuant to Rule 2228.1 to serve students with the

category of disability under which the student was determined to be eligible for special education; and

- (ii) The proposed placement is deemed appropriate by the student's IEP team.
- (b) The Commissioner may specify conditions under which the placement is to be carried out.

2228.3 In order to obtain special education approval, an independent school shall meet standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:

- (1) Admissions;
- (2) Least restrictive environment;
- (3) Discipline;
- (4) Graduation;
- (5) Faculty qualifications; and
- (6) Faculty-student ratios, including ratios that meet the Vermont School Quality Standards for the direct provision of special education and related services or consultation regarding the provision of special education and related services to publicly-placed students on IEPs;

2228.3.1 In order to obtain special education approval, an independent school shall coordinate with sending responsible agencies, parents, public agencies, and other service providers serving a student by:

- (1) Maintaining educational records and disclosing them to the sending responsible agency and the student's parents;
- (2) Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- (3) Implementing IEPs; and
- (4) Providing prior notice to the sending LEA regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.

These practices shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate.

- 2228.3.2** An independent school shall satisfy the state licensure requirements for personnel who are responsible for the provision or supervision of special education and related services.

2228.4 Written Agreements Required

2228.4.1 Agreement as to Costs

In order to obtain special education approval, an independent school shall assure the State Board of Education that prior to enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into a written agreement with the sending responsible agency that outlines tuition, room, board and other costs associated with the student's attendance. For students on an IEP who are placed by a state agency or a designated community mental health agency, or any other agency defined by the Commissioner, in accordance with 16 VSA §2948, the agreement shall be with the Commissioner of Education. In the instance of an emergency placement, such provisions may be agreed upon within thirty days of the student's enrollment.

2228.4.2 Agreement as to Non-Instructional Services

In order to obtain special education approval, an independent school shall assure the State Board of Education that within thirty days of enrolling a publicly-placed student who is served pursuant to an IEP, it will enter into written agreement with the sending responsible agency as to the division of responsibility for performance of non-instructional services, including compliance with special education procedural requirements. For students placed by a state agency or a designated community mental health agency, or another agency defined by the Commissioner, this agreement shall be with the local educational agency that has educational planning responsibility for the student.

2228.5 Special Education Approval Procedures

- (1) Application for special education approval shall be made at the time of application under Rule 2200. An independent school that has already obtained independent school approval from the State Board of Education may at any time submit an application for special education approval to the Commissioner.

- (2) Application for special education approval shall be submitted in writing to the Commissioner in accordance with the format prescribed by the Commissioner.
- (3) The procedures for special education approval shall be the same as those for approval in accordance with Rules 2222.1 through 2222.7. To the extent possible, these procedures shall occur simultaneously.

2228.6 After receiving approval for special education purposes, an independent school shall notify the Commissioner of any significant changes to its special education program, professional staff, governance, financial capacity or facilities. The Commissioner may, upon such notification, gather additional information from the school, including by means of a site visit. As a result, the Commissioner may return to the State Board for a change in the school's approval for special education purposes. If the Commissioner petitions the State Board for a change to an independent school's approval for special education purposes, the Council of Independent Schools and the subject independent school shall be notified and have an opportunity to be heard by the State Board. If the school disagrees with the proposed change to its approval for special education purposes, the Board shall hear the matter in accordance with the requirements of Rule 1230, et seq.

2228.7 Independent schools that are approved for special education purposes shall be deemed to offer a minimum standard of service to a student, as required by 16 VSA §2973, if those services are offered according to a written agreement with the sending responsible agency, as required by Rule 2228.4.

2228.8 Rate Approval for Independent Schools Approved for Special Education Purposes

- (1) Each independent school approved for special education purposes by the State Board of Education shall annually report its rates for special education tuition, related services and room and board to the Commissioner on a form prescribed for that purpose.
- (2) The rates that an independent facility approved for special education purposes charges for tuition, related services and room and board shall be no more than the costs that are reasonably related to the level of services provided to its publicly-placed special education students. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(3) The Commissioner shall review each special education approved independent school's annual rate report. If the Commissioner concludes that a special education approved independent school's rates are not reasonably related to the level of services provided to publicly-placed special education students, the Commissioner shall make a determination as to the maximum rate that public schools and the State Department of Education would pay to the independent school for those services and offer the school an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory to the Commissioner, he or she shall notify the Council for Independent Schools and shall refer the matter to the State Board of Education.

(a) Upon such referral by the Commissioner, the Board shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.

(b) The State Board's determination shall be final.

(4) Time lines for rate approvals from the Department

(a) To have a new rate approved for the ensuing school year, an independent school shall submit a request for rate approval with supporting documentation to the Department prior to November 15. The Commissioner shall notify the independent school of the results of the review on or before January 15.

(b) If a request for a new rate approval is not submitted by November 15, the most recent approved rate will be in effect until the following November 15, when the next rate request is due.

2228.9 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved independent schools to participate in the development and revision of State standards that apply to independent schools.

2229 Corrections Education Program

To the extent applicable, the Commissioner shall conduct his or her review of the Corrections Education Program in accordance with the procedures and standards contained within Rules 2220 through 2228.8, as if it were an independent school.

2230 Approval of Tutorial Programs: Statutory authority 16 V.S.A. 828

2230.1 "Tutorial program" means education provided to a pupil who is placed in a short-term program that is not administered by a school district. The purpose of the program is to provide evaluation and/or treatment. This does not include home based tutorials, programs operated by a public school or collaborative, or a program of an independent school that has been approved under 16 V.S.A. §166. The average length of stay for students in a tutorial program shall be not more than six months. The Commissioner may waive the average length of stay time period for individual programs, based upon needs of the students served by the program

2230.2 Procedures for Approval

2230.2.1 Application shall include the following:

- (a) Name, address, telephone number of the tutorial program,
- (b) Name of the Chief Executive Officer or contact person,
- (c) A statement of the tutorial program's purpose and objectives,
- (d) A description of the tutorial program enrollment including a statement of who it is designed to serve,
- (e) A description of the plan of organization for the tutorial program and
- (f) A tutorial program calendar.

2230.2.2 Review

Upon receipt of an application for approval, the Commissioner shall appoint a committee of at least two persons to review the application and visit the tutorial program.

2230.2.3 Report to the Commissioner

The appointed committee shall present a written recommendation regarding possible approval to the Commissioner. A copy of the recommendation shall be sent to the tutorial program. The applicant shall be given at least 30 days to respond before a recommendation regarding approval or disapproval is made by the Commissioner to the State Board of Education.

2230.2.4 Board Action

The Commissioner shall recommend approval or disapproval for action by the State Board at their next meeting. Officials of the tutorial program shall be notified of this meeting date.

2230.2.5 Term of Approval

The State Board may grant approval for a term of not more than two years. The tutorial program must be approved prior to receiving tuition payments from a public school district.

2230.2.6 Renewal

Not less than three months prior to expiration of a tutorial program's approval, the Commissioner shall send an application packet and a letter notifying the program when the site visit will occur. The completed application must be received from the tutorial program not later than 30 days prior to the scheduled site visit.

2230.2.7 Denial, Revocation or Suspension of Approval

Prior to recommending denial, revocation or suspension of approval to the State Board of Education, the Commissioner shall notify the tutorial program of the reasons for the proposed action and shall afford the tutorial program an opportunity to be heard by the Board. Approval of a tutorial program shall be revoked or suspended by the Board based on a finding that the tutorial program no longer meets the criteria for approval.

2230.2.8 Standards and Regulations

The Vermont State Board of Education shall afford the opportunity for approved tutorial programs to participate in the development and revision of State standards that apply to tutorial programs.

2230.3 Criteria for Approval

In order for a tutorial program to obtain approval from the State Board of Education, the program shall meet both the general and special education requirements in the following areas:

- 2230.3.1** The instruction and methods of instruction offered are age and ability appropriate for the student, and are coordinated with the student's responsible school district as set forth in Rule 2230.3.10, below.

- 2230.3.2** The tutorial program has sufficient facilities and materials or access to other facilities and additional materials as necessary to provide an appropriate education.
- 2230.3.3** The tutorial program's facilities and operation comply with local, state and federal requirements pertaining to the health and safety of students.
- 2230.3.4** The tutorial program employs an adequate number of professional staff for the population served and these staff members are qualified by training and experience in the areas in which they are assigned.
- 2230.3.5** Teachers providing or supervising the provision of special education have licensure and endorsement as would be required for the equivalent work in a Vermont public school.
- 2230.3.6** All professional staff has relevant experience and/or training in the duties to which they are assigned.
- 2230.3.7** The tutorial program maintains a register of the daily attendance of each of its pupils and reports the attendance to the responsible school district.
- 2230.3.8** The tutorial program maintains an operating schedule that includes instruction for no less than ten hours per week unless inconsistent with medical and/or educational recommendations. The operating schedule must be sufficient to ensure that the instructional services address the individual needs of a student with disabilities and are consistent with the student's IEP.
- 2230.3.9** The tutorial program has the financial capacity to carry out its educational purposes for the period of approval.
- 2230.3.10** The tutorial program coordinates educational services with the responsible school district, including credit for coursework for high school and coordinates with other responsible agencies such as Social and Rehabilitative Services, Community Mental Health Centers, and Family-Parent Child Centers by:
- 2230.3.10.1** Contacting the responsible school district (s) (see 16 V.S.A. §1075) in order to access school records and determine the special education status of the student:
- 2230.3.10.2** Reviewing the IEP, the student's needs and its own ability to implement the IEP;

- 2230.3.10.3** Making a formal referral for a special education evaluation to the responsible school district, if when receiving a student, he/she is suspected of having a disability;
- 2230.3.10.4** Maintaining educational records and disclosing them to the responsible school district and the student's parents, unless restricted by statute, court order or other legally binding document specifically revoking those rights;
- 2230.3.10.5** Participating in evaluation procedures and in the development of IEPs, including plans for reintegration and transition services;
- 2230.3.10.6** Implementing IEPs; and
- 2230.3.10.7** Providing prior notice to the responsible school district regarding the need for a change in a student's program or placement, including long-term suspension or expulsion.
- 2230.3.11** In order to obtain approval, a tutorial program shall meet special education standards that apply to state and local education agencies. This shall be evidenced by the maintenance and implementation of written policies or procedures, as appropriate, in at least the following areas:
 - (1) Admissions,
 - (2) Discipline, and
 - (3) Significant change in placement.

2230.4 Rate Approval for Tutorial Programs

- 2230.4.1** Each tutorial program shall annually report its rates for tuition, related services and room and board, if applicable, to the Commissioner on a form prescribed for that purpose.
- 2230.4.2** The rates that a tutorial program charges for tuition, related services and room and board shall be reasonably related to the actual costs of the services provided. Reasonable relationship shall be determined by utilizing generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.
- 2230.4.3** The Commissioner shall review each tutorial program's annual rate report. If the Commissioner concludes that a tutorial program's rates are not reasonably related to the services provided, the Commissioner shall make

a determination as to the maximum rate that public schools and the State Department of Education would pay to the tutorial program for those services and offer the tutorial program an opportunity for explanation regarding why the maximum rate the Department would pay is not adequate. If the explanation is not satisfactory, the Commissioner shall refer the matter to the State Board of Education.

- 2230.4.3.1** Upon such referral by the Commissioner, the State Board of Education shall conduct a formal proceeding in accordance with the requirements of Rule 1230, et seq.
- 2230.4.3.2** The State Board of Education's determination shall be final.

4312 Discipline Procedures for Students Who are Not Eligible for Special Education Services, but Who Are or May Be Qualified Individuals with Disabilities under Section 504 of The Rehabilitation Act of 1973 (29 U.S.C. § 794; 34 C.F.R. § 104 et seq.)

In addition to the general disciplinary procedures found within Rule 4311, and in accordance with 34 C.F.R. § 104.36, the following procedures apply to children who are qualified individuals with disabilities as defined by Section 504 of the Rehabilitation Act of 1973 (hereinafter Section 504).

- (1) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 consecutive school days in a school year unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 C.F.R. § 104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (2) A Section 504 student shall not be removed from his or her current educational placement for disciplinary reasons for more than 10 cumulative days in a school year when the removals constitute a change in placement as defined in Rule 2360.2(d)(1) unless the following procedures have been completed:
 - (a) A re-evaluation, as defined by 34 C.F.R. § 104.35; and
 - (b) A determination by the student's Section 504 team that the conduct is not a manifestation of his or her disability.
- (3) When it is determined by a student's 504 team that the conduct is not a manifestation of the student's qualifying disability, the student may be disciplined in the same manner, and subject to the same disciplinary consequences, as a non-disabled child, including suspension or expulsion without the provision of services.
- (4) When it is determined by a student's Section 504 team that the conduct is a manifestation of his or her qualifying disability, a change in program or placement may be implemented by the student's Section 504 team and the student's Section 504 team may respond to the conduct by designing, amending and/or enforcing a plan of behavior management.
- (5) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student from his or her current educational placement for more than 10 consecutive school days in a school year, the student is believed to be a qualified

individual with a disability under Section 504, a Section 504 evaluation shall be completed prior to imposition of the removal.

- (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (6) If, at the time of the occurrence of conduct that gives rise to consideration of removal of a student who is believed to be a qualified individual with a disability under Section 504 for more than 10 cumulative school days in a school year, and the removals constitute a change in placement as defined in Rule 2360.2(d)(1), a Section 504 evaluation shall be completed prior to imposition of the removal.
 - (a) If the evaluation results in a determination that the student is a qualified individual with a disability under Section 504, the discipline procedures in this rule shall be followed.
 - (b) If the evaluation results in a determination that the student is not a qualified individual with a disability under Section 504, the discipline procedures in Rule 4311 shall be followed.
- (7) If a child who is a qualified individual under Section 504 possesses or carries a weapon, as defined in Rule 4313.9(a), to school or at a school function, he or she may be placed in an interim alternative educational setting (IAES) in accordance with the procedures set forth in Rule 4313.9 and Rule 1253. The student's 504 team shall determine the IAES, and the services provided in the IAES, in accordance with the procedures set forth in Rule 4313.9. It is the intent of this section to discipline a child who is a qualified individual under Section 504 in the same manner as students who are eligible for special education when they possess weapons at school or at school functions.
- (8) When a parent disagrees with disciplinary action taken by a school district, the parent may request an impartial due process hearing, and the procedures in Rules 2365.1.6(c) through 2365.1.9 shall apply. In addition to or in lieu of a due process hearing a parent may file a complaint with the U.S. Department of Education Office for Civil Rights.

- (9) A hearing officer may order a change in the placement of a child who is a qualified individual under Section 504 to an appropriate IAES for not more than 45 calendar days, if the hearing officer, in an expedited due process hearing:
- (a) Determines that the school district has demonstrated by substantial evidence, which for purposes of this section shall mean a preponderance of the evidence, that maintaining the current placement of the child is substantially likely to result in injury to the child or others;
 - (b) Considers the appropriateness of the child's current placement;
 - (c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
 - (d) Determines that the IAES that is proposed by school personnel will enable the child to continue to progress in the general curriculum. The services provided to and modifications made for the child in the IAES shall be designed to address and prevent the child's offending behavior.
- (10) This Rule (4312) shall not apply when a responsible agency takes disciplinary action against a Section 504 student if:
- (a) The misconduct for which the student is being disciplined pertains to the use or possession of illegal drugs or alcohol at school or at a school function; and
 - (b) The student is currently engaging in the use of alcohol or illegal drugs.

In this instance, the Section 504 student shall be disciplined in accordance with Rule 4311.

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